

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1102/JP/2019
निर्धारण वर्ष / Assessment Year : 2012-13

Smt. Sarla Mundra C-150, I.P.I.A. Kota, 324005	बनाम Vs.	DCIT, Central, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACSPM7909C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. C. M. Birla (CA)
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 23/07/2020
उद्घोषणा की तारीख / Date of Pronouncement: 27/07/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Udaipur dated 28.06.2019 confirming the levy of penalty u/s 271(1)(c) for A.Y 2012-13.

2. During the course of hearing, the Id. AR drawn our reference to the notice u/s 271(1)(c) dated 29.01.2016 and it was submitted that in the said notice, the Assessing Officer has asked the assessee to show cause as to why penalty should not be levied u/s 271(1)(c) of the Act for concealment of particulars of income or furnishing inaccurate particulars of income. It was submitted that during the penalty proceedings, the assessee has raised the contention before the Assessing Officer stating that no specific charge for levy of penalty has been specified in the show cause notice. However, the Assessing Officer ignored the submission and levied the penalty on charge of

concealment of particulars of income and the relevant findings of the AO reads as under:-

"In view of the totality of the facts and circumstances of the case, the provisions of section 271(1)(c) of the Act and in the light of above discussion, I hold the assessee is defaulter for concealing particulars of his income and find her to be a fit case for imposition of penalty as provided for in section 271(1)(c) of the Act. "

3. It was further submitted that during the appellate proceedings before the Id. CIT(A), reference was drawn to the decision of Hon'ble Rajasthan High Court in case of Shweta Construction Company Pvt. Ltd. vs. ITO, Ward 3(4), Jaipur (*in D.B.I.T. Appeal No. 634/2008 dated 06.12.2016*) laying down the proposition that where the AO failed to specify the charge while initiating the penalty proceedings, the proceedings are vitiated. The Id. CIT(A) did not accept the assessee's submission and relied on the Hon'ble Supreme Court decision in case of Sundram Finance Limited dated 23.04.2018 wherein the Special Leave Petition against the Hon'ble Madras High Court decision has been dismissed by the Hon'ble Supreme Court and no speaking order has been passed. It was submitted that in the present case, both in the assessment order as well as the penalty show cause notice, the penalty has been initiated for concealment of particulars of income or furnishing inaccurate particulars of income. However, the penalty is levied by the AO for concealing particulars of income. Since, there is variation in the charge levied in the show cause viz a viz the penalty order, the penalty so levied is not sustainable in view of the decision of Hon'ble Apex Court decision in case of SSA's Emerald Meadow. It was submitted that the similar view has been taken by the Co-ordinate Benches and our reference was drawn to the Co-ordinate Bench decision in case of B. D. Mundra & Sons, Kota vs. DCIT, Central, Kota in ITA No. 826/JP/2019 dated

25/10/2019. It was accordingly submitted that the penalty so levied may kindly be quashed.

4. Per contra, the Id. DR submitted that the assessee was well aware of the reasons for initiation of penalty proceedings and submitted reply accordingly during the penalty proceedings. Therefore, even assuming there was a defect in the penalty notice, it did not result in denial of natural justice to the assessee and in support, reliance was placed on the Hon'ble Supreme Court decision in case of M/s Sundram Finance Limited dated 23.04.2018. It was further submitted that the provision of section 5A to section 271(1)(c) are squarely applicable in the instant case and notwithstanding the fact that the income of Rs. 4,50,000/- is declared by the assessee in the return of income filed on 03.12.2013, since such return has been filed after the date of search, i.e. 13.08.2013, there is deemed concealment of income Rs. 4,50,000/-. Accordingly, there is no infirmity in the order of the lower authorities and the levy of penalty on this issue be confirmed.

5. We have heard the rival submissions and perused the material available on record. In the instant case, the Assessing officer in the aforesaid show-cause notice dated 29.01.2016 has initiated the penalty proceedings "for concealing the particulars of income or furnished inaccurate particulars of such income" and subsequently, while passing the penalty order, the Assessing officer has levied penalty for concealing the particulars of income. We therefore find that though the Assessing officer has initiated the penalty proceedings on both the charges, while levying the penalty, the Assessing officer has levied the penalty on a specific and clear-cut charge for concealing the particulars of income. Therefore, it is not a case where the penalty has been initiated for a particular charge and thereafter, penalty has been finally levied on a different charge. The assessee was made aware of

both the charges at the time of initiation of penalty proceedings and while finally levying the penalty, the AO has given a specific finding that it is a case of concealment of particulars of income. Even where it is held that the charge is uncertain at the initiation stage, the same has been made definite while passing the penalty order, therefore, it is not a case of lack of opportunity to the assessee as well as lack of application of mind on the part of the Assessing officer. It is not a case of the assessee that the charge of concealment of particulars of income is not attracted in the facts of the present case. The AO has invoked the provisions of explanation 5A to section 271(1)(c) which has been confirmed by the Id CIT(A). The Id. CIT(A) has dismissed the contention of the assessee of suo motu filing the revised return of income for the reason that such return has been filed, even though the disclosing unexplained investment in jewellery found during the course of search, subsequent to the date of search. In case of B.D Mundra & Sons (supra) relied upon by the Id AR, we find that in that case, though the Assessing officer has not initiated the penalty on a specific charge, however, even while levying the penalty, no specific finding has been given as to three separate disallowances made during the assessment proceedings and the Assessing Officer has merely gone by the order of the Tribunal in the quantum proceedings where additions have been sustained and has not given any specific finding as to how the disallowances so made and sustained results in levy of penalty. In that background, the penalty was held not justified as there was no specific charge and finding even while levying the penalty. However, in the instant case, the charge as well as finding is specific at the time of levy of penalty, therefore, the said decision is distinguishable on facts and doesn't support the case of the assessee. Similar is the proposition laid down by the Hon'ble Rajasthan High Court in case of Shweta construction (supra) that the AO has to record a specific finding in the penalty order and such finding cannot be uncertain at the time of levy of penalty. In the result, we donot

find any infirmity in the order of the lower authorities and the penalty so levied by the Assessing officer is hereby confirmed.

In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 27/07/2020.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 27/07/2020

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Smt. Sarla Mundra, Kota
2. प्रत्यर्थी / The Respondent- DCIT, Central, Kota
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1102/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar