

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 962/JP/2019
निर्धारण वर्ष / Assessment Years : 2012-13

Virendra Singh Verma 114-B, Gali No. 2, Makarwali Road, Ajmer.	बनाम Vs.	ITO, Ward-2(1), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPPV 6920 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sunil Porwal (C.A.)
राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 06/04/2022
उद्घोषणा की तारीख / Date of Pronouncement : 25/04/2022

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal of the assessee is directed against the order dated 10.06.2019 of Id. CIT(A)- Ajmer, arising from penalty order passed U/s. 271(1)(c) of the Income Tax Act, 1961 (in short the "Act") for the assessment year 2012-13.

2. The assessee has raised the following grounds:-

- "1. Confirming the levy of penalty of Rs. 500000.00 u/sec. 271(1)(c).*
- 2. Any other matter with prior permission of the chair."*

3. Brief facts of the case are that the assessee filed his return voluntarily on 08.10.2014 declaring total income of Rs. 1,30,00,000/- and paid tax on the long term capital gain calculated as per actual sale consideration. Later on 15.10.2014 the assessee was issued notice under section 148 for difference in stamp value in sale consideration as disclosed in return of income and as assessed by registrar stamps (i.e. Rs. 1,91,50,085/-) however later the matter was referred under section 50C(2) to departmental valuer who assessed the same at Rs. 1,71,72,400/- thereby resulting into an addition of Rs. 23,23,310/-. Thus the above addition is on account of deeming provision (i.e. section 50C). The variation in the sales value versus value as adopted by departmental valuer as per Section 50C shows that there is no withholding or misrepresentation of facts by the assessee before the AO. The concealment is always with reference to the facts and it cannot be imposed with reference to claim or disallowance on difference of opinion. The addition has been only based upon the estimates and values obtained from the departmental valuer in preference to the value as per sales deed. Thus no facts, evidence or transaction has even been concealed. Thus it is neither technical error nor intentional but is only a “bonafide belief” & does not tantamount to be furnishing of inaccurate particulars.

4. The AO arrived the findings that the assessed at Rs. 26,68,640/- including long term capital gain of Rs. 23,23,310/- on which separate rate of tax would be charges as per provisions of Act. Charged interest u/s 234A, 234B and 324C. Penalty notice u/s 271(1)(c) has been issued for furnishing of inaccurate particulars of income.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee has reiterated its arguments in written submission in page Nos. 2 to 7 of the order. The CIT(A)

for the reason stated in his assessee order has rejected arguments and submissions made by the assessee.

6. The CIT(A) has confirmed the order of the AO by observing as under:-

“4. I have gone through the penalty order, statement of facts and grounds of appeal carefully. It is seen from penalty order that the appellant had not filed any return of income u/s 139(1) or 139(4). When the department detected the transaction of sale of the property in which the appellant has earned capital gain, only then, the appellant filed return of income on 08.10.2014 which was non-est in the eyes of law, as it was neither filed u/s 139(1) nor 139(4). Had the Revenue Authorities not detected, the appellant would not have declared any income to the department. Even in the return of income filed in response to the notice issued u/s 148, the appellant did not declare any income under the head "long term capital gain" though he was fully aware that capital gain on sale of the property computed with reference to section 50C was taxable as the value determined by the Stamp Duty Authority of the property sold by the appellant (Rs. 1,91,50,085) was more than the sale consideration recorded in the sale deed (Rs. 1,30,00,000). Thus, it is clear that the appellant did not want to declare any income under the head "capital gain", though it had the taxable income under the head "capital gain". Therefore, I am of the considered view that appellant has concealed the income of Rs. 23,23,310/- earned by him under the head "long term capital gain". Accordingly, the penalty of Rs. 5,00,000/- levied by the AO in respect of the concealed income of Rs. 23,23,310/- is hereby confirmed.

5. In the result, the appeal is dismissed.”

7. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before the Tribunal. Before us, the assessee has reiterated his submissions, which were not taken on record by the Id. CIT(A). The Id. AR for the assessee submitted detailed written submissions dated 29.09.2021 which are as under:-

“Thus where the assessee commits any “BONAFIDE MISTAKE” than “DELIBERATE MISTAKE” & the bonafide mistake as committed is

also based on expert advice, it cannot be alleged as “CONCEALMENT” or “INACCURATE PARTICULARS” & no penalty can be levied u/sec. 271(1)(c).

Refer CIT V/s Skyline Auto Products (P) Ltd. [2004] 271 ITR 335 [2005] 142 Taxman 558 (MP).

When a technical or venial breach of the provisions of the Act is there & where the breach flows from a “BONAFIDE BELIEF” than no penalty u/sec. 271(1)(c) can be levied.

Refer Hindustan Steel Ltd. V/s State of Orissa (1972) 83 ITR 26 (SC).

Before levying penalty u/sec. 271(1)(c) the AO has to prove that assessee has consciously made concealment or inaccurate particulars of his income. In the given circumstances only the technical opinion has changed resulting into change in quantum of tax method of tax but nowhere is could be proved that “CONCEALMENT” taken place & thus no penalty to be levy.

Refer K.C. Builders V/s ACIT (2004) 265 ITR 562/135 Taxman 461 (SC).

In recent decided cases of Hon’ble Supreme Court it has been held that when no information given in return found to be incorrect & making incorrect claim or disallowing any claim does not amount to be concealment.

Refer CIT V/s Reliance Petro Products (P) Ltd. (2010) 322 ITR 158 (SC).

Before levying penalty, the concerned officer is required to find out that even if there is any failure referred to in the concerned provision, the same is without a reasonable cause. The initial burden is on the assessee to show that there existed reasonable cause which is the reason for the failure referred to in the concerned provision. Thereafter the officer dealing with the matter has to consider whether the explanation offered by the assessee as regards the reason for failure, is on account of reasonable cause. Reasonable cause means an honest belief founded upon reasonable grounds, of the existence of a state of circumstances

which (assuming them to be true), would reasonably lead any ordinary prudent and cautious man (placed in the position of the person concerned), to come to the conclusion that the same was the right thing to do. The cause shown has to be considered and only if it is found to be frivolous, without substance of foundation, the aforesaid penalty can be imposed – WOODWARD GOVERNORS INDIA (P.) LTD. v. CIT [2001] 118 TAXMAN 433, 745 (DELHI).

It has consistently held by the High Courts and ITAT's that no penalty u/sec. 271(1)(c) can be levied in respect of addition made under the deeming provisions of section 50C unless the A.O. brings on record evidence to show that the appellant has received consideration over and above the consideration recorded in the sale deed. The A.O. in this case has not brought on record any evidence to show that the appellant had received any additional consideration over and above the consideration recorded in the sale deed. The assessee voluntarily & in good faith has declared the capital gain at "ACTUAL SALE PRICE" in return.

Thus the assessee has neither "concealed the particulars of his income" nor has filed inaccurate particulars of income & no deliberate or conscious contumacious or dishonest breach of law is there. Merely a technical or venial breach of the Provisions of the Act or where breach flows from a bonafide belief no penalty U/sec. 271(1)(c) for alleging "CONCEALMENT" can be levied.

Also refer case of ACIT V/s Mrs. N. Meenakshi as reported in 319 ITR (AT) 262 (Chennai) (2009) before ITAT- Chennai Bench dated 13.02.2009 wherein held that where additions made on values of Dy. Registrar office being deemed value and even additions on such deemed value accepted by assessee it cannot be said furnishing of inaccurate particular for levy of penalty of concealment u/sec. 271(1)(c). Further the assessee has not suppressed the accounting value of the sales however only the additions made on technical ground of section 50C wherein for capital gain purpose the value of Dy. Registrar is adopted for taxation.

Also refer case of KISHAN CHAND JAINANI, JAIPUR V/s ITO, JAIPUR for A.Y. 2006-07 in Appeal no. 338/JP/2010 as decided by ITAT, Jaipur Bench-A, Jaipur wherein held that ignorance of the provisions of section 50C of the Act is a bona fide belief on the part of

assessee in not taking the valuation as per stamp duty officer for computing the amount of capital gains as per section 50C.

Similar in appeal no. ITAT JPR Bench ITA 1074/JP/10 in case of late Shri Pratap Chand Jain on the similar ground / issue has been decided favourably to assessee. Considering these facts the Ld. CIT(A) Ajmer in appeal No. 488/15-16 A.Y. 2010-11 dated 24.12.2018 in case of Pradeep Brahmwar has deleted the penalty.

Further under the similar circumstances the Hon'ble Gujrat High Court in case of PCIT, Vadodara – 2 V/s Sun on Peak Hotel (P) Ltd., has deleted the penalty on account of deeming provisions applicability (2018) 95 taxmann.com 320 (Gujrat).

Further under the similar circumstance the Hon'ble Ahmedabad Tribunal in Appeal No. (IT Appeal No. 508 (Ahd.) of 2010 dated 22.06.2012 (para 7) in case of Chimanlal Manilal Patel V/s ACIT, has also deleted the penalty as levied u/sec. 271(1)(c)

Refer CIT V/s Skyline Auto Products (P) Ltd. [2004] 271 ITR 335 [2005] 142 Taxman 558 (MP).

When a technical or venial breach of the provisions of the Act is there & where the breach flows from a “BONAFIDE BELIEF” than no penalty u/sec. 271(1)(c) can be levied.

Refer Hindustan Steel Ltd. V/s State of Orissa (1972) 83 ITR 26 (SC).

Before levying penalty u/sec. 271(1)(c) the AO has to prove that assessee has consciously made concealment or inaccurate particulars of his income. In the given circumstances only the technical opinion has changed resulting into change in quantum of tax method of tax but nowhere is could be proved that “CONCEALMENT” taken place & thus no penalty to be levy.

Refer K.C. Builders V/s ACIT (2004) 265 ITR 562/135 Taxman 461 (SC).

It is requested to kindly delete the penalty as levied.”

8. The Ld. DR, on the other hand strongly supporting the order of the CIT(A) submitted that there is no merit in arguments taken by the Ld. AR of the assessee and the AO has rightly taken has a fit case for imposition of penalty U/S 271(1)c.

9. We have heard both the parties, perused materials available on record. We are of the opinion that the AO has considered the full value consideration U/s 50C as against the actual sale consideration declared by the assessee . The increased of value by the AO in the full value consideration does not amount either concealment of particulars of income or furnishing inaccurate particulars of income. Further we observed additions made on values of Dy. Registrar office being deemed value and even additions on such deemed value accepted by assessee it cannot be said furnishing of inaccurate particular for levy of penalty of concealment u/sec. 271(1)(c).

10. We are relying on the principle laid down by the Hon'ble Supreme Court in the case of *CIT Vs. Reliance Petroproducts Pvt. Ltd.* 322 ITR 158 (SC), the penalty cannot be sustained. The Hon'ble Supreme Court has held as under:

10. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as :

"not accurate, not exact or correct; not according to truth ; erroneous; as an inaccurate statement, copy or transcript."

11. We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the * [2007] 291 ITR 519 (SC). ** [2008] 306 ITR 277 (SC).

assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of

inviting the penalty under section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars.

12. *It was tried to be suggested that section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect ; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms ; (i) an item of receipt may be suppressed fraudulently ; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature.*
13. *In this behalf the observations of this court made in Sree Krishna Electricals v. State of Tamil Nadu [2009] 23 VST 249 as regards the penalty are apposite. In the aforementioned decision which pertained to the penalty proceedings under the Tamil Nadu General Sales tax Act, the court had found that the authorities below had found that there were some incorrect statements made in the return. However, the said transactions were reflected in the accounts of the assessee. This court, therefore, observed (page 251) :*

"So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's account books. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities includes these items in the dealer's turnover disallowing the exemption, penalty cannot be imposed. The penalty levied stands set aside."

14. *The situation in the present case is still better as no fault has been found with the particulars submitted by the assessee in its return.*

15. *The Tribunal, as well as, the Commissioner of Income-tax (Appeals) and the High Court have correctly reached this conclusion and, therefore, the appeal filed by the Revenue has no merits and is dismissed."*

Looking to the totality of the facts and circumstances of the case, we direct to delete the penalty sustained by the ld. CIT(A)."

11. Therefore, we are of the opinion that said claim made under the provisions of the Act is disallowed by the AO would not attract the penalty provisions of Section 271(1)(c) of the Act. The Hon'ble Supreme Court in case of CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 has held that where the information given by the assessee is not found to be incorrect the assessee cannot be held guilty of furnishing inaccurate particulars of income for the purpose of levying the penalty U/s 271(1)(c) of the Act. The Hon'ble Supreme Court has also observed that merely making a wrong claim does not amount to furnishing inaccurate particulars of income in the absence of finding that any detail by the assessee is incorrect or false. Based on the ld. AR for the assessee has referred to various decisions of the High Courts and Coordinate Bench of the Tribunal on the point that penalty order passed by the AO based on different charges in the show cause notice is not valid. Accordingly, in view of the facts and circumstances of the case the penalty levied by the AO U/s 271(1)(c) of the Act is not sustainable and the same is deleted.

In the result, the appeal of the assessee is allowed

Order pronounced in the open Court on 25/04/2022.

Sd/-

(राठोड कमलेश जयन्तभाई)

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

Sd/-

(एस.सीतालक्ष्मी)

(Dr. S. Seethalashmi)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 25/04/2022.

***Santosh**

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

1. अपीलार्थी / The Appellant Virendra Singh Verma, Ajmer.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(1), Ajmer.
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. 962/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar