

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा० मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 623/JP/2023
निर्धारण वर्ष / Assessment Year : 2015-16

M/s. Shiv Agrevo Ltd. Jhalawar Road KalManda Baran 325 205	बनाम Vs.	The DCIT Circle-2 Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCS 7224 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Devang Garvieya, Advocate
राजस्व की ओर से / Revenue by: Shri Anoop Singh, Addl CIT-DR

सुनवाई की तारीख / Date of Hearing : 30/01/2024
उद्घोषणा की तारीख / Date of Pronouncement: 29 /04/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 08-09-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2015-16 raising therein following grounds of appeal.

“1. The impugned penalty order u/s 271(1)© dated 19-03-2020 is bad in law and on facts of the case for want of jurisdiction and various other reasons and hence the same kindly be quashed.

2. Rs.13,25,297/-: The AO erred in laws as well as on the facts of the case in imposing penalty u/s 271(1)© of Rs.13,25,297/-. The penalty so imposed and confirmed by the Id. CIT(A) being totally contrary to the provisions of law and facts kindly be deleted in full.

3. That the impugned show cause notice issued u/s 274 r.w.s. 271(1)© of the Act is quite vague. The impugned penalty based on such a notice being contrary to the provisions of law and facts kindly be quashed.

2.1 Apropos ground No. 1 to 3 of the assessee, the facts as emerges from the order of the ld.CIT(A) are as under:-

“5. Decision: The submissions filed by the appellant, assessment order and the appellate order and penalty order have been perused. The appellant has primarily claimed that the penalty can't be levied where addition was made on estimated basis. The appellant has also claimed that no penalty was initiated in other years where cases of the assessee were completed by making GP addition, which were reduced / deleted by CIT(A). It is noted that the AO while making the impugned addition had rejected the books of accounts of the assessee u/s. 145(3) of the Act and had made addition of Rs. 1,80,80,961/- to the total income on the impugned issue. In this regard the decision of learned CIT(A) dated 11/01/2019 for A.Y. 2015-16 has perused and the relevant portion is quoted below:

However, it is also observed that in this case, the AO has noticed certain shortcomings in the accounts and pointed them out to the assessee. Based on the replies, it can be contended that the assessee was not able to detail variety based pricing or justify clearly the other deficiencies in maintaining proper details of purchases vis a vis raw material consumption, rates of materials, valuation of closing stock, wastages and shortage losses and direct and indirect expenses for packing materials, fuels etc. To that extent the book results were not satisfactory in view of the AO. Accordingly, I am of the opinion that the AO was justified in rejecting the books of accounts u/s 145(3) and framing a best judgement order.

.....

Looking to the totality of facts Involved in the case, I would consider an increase in GP just on the basis of discrepancies pointed out in the accounts, and not for any other reason up by 0.20% to 3.82%. In real terms it will take the GP to Rs.7,86,25,764/- as against the GP of Rs.7,45,41,013/- shown by the appellant. The addition confirmed will be Rs.40,84,751/- The balance addition of Rs. 1,39,96,209/- is accordingly directed to be deleted.

5.1 From the above it is seen that the appellant could not justify the various claims as discussed in the appellate order and the AO had to determine the profits/ income based on rejection of books of accounts u/s.145(3) and framing the best judgment order. Learned CIT(A) has agreed that the books of accounts were rightly rejected by the AO, but limited the addition just on the basis of discrepancies pointed out and the addition component based on GP figures of other years was deleted. Thus, it is abundantly clear that the addition made in this year is on the basis of specific discrepancies pointed out in the accounts by the AO and this is not a case of estimated addition as claimed by the appellant. The case laws relied upon by the appellant are having different facts and hence not applicable to the instant case. As regards other years, the relevant details to establish that no penalty was imposed by the AO in these years have not been furnished. However, every year is a separate proceeding and moreover the addition made / sustained by the learned CIT(A) points out to a discrepancy of a substantial amount of Rs.40,84,751/- unlike other years. The appellant has not been able to establish reasonable cause for such failure as required u/s 273B of the I.T. Act. In such circumstances, the grounds of appeal disputing the imposition of penalty by the AO are dismissed. As a result, the appeal is dismissed.

6. As a result, the appeal of the appellant is dismissed.”

2.2 During the course of hearing the ld. AR of the assessee has filed a detailed written submission praying therein to delete the penalty confirmed by the ld. CIT(A).

2.3 On the other hand, the ld. DR strongly relied upon the orders of the lower authorities.

2.4 We have heard both the parties and perused the materials available on record including the written submission of the assessee.. It is noticed that penalty of Rs.13,25,297/- imposed u/s 271(1)(c) is under challenge before us, which was imposed with reference to the trading addition made by the AO at Rs.1,80,80,961/- but in the first appeal was partly sustained by the ld. CIT(A) up to Rs. 40,84,751/-. There appears no further appeal by the assessee against this part sustenance of the trading addition. A careful perusal of the orders of the authorities below in the quantum proceedings as also in the penalty proceedings show that the entire discussion is only in reference to the trading addition made by the AO but partly reduced by the ld. CIT(A). No specific item of income based on the alleged concealment of income and/or for furnishing of inaccurate particulars has been brought on record. We agree with the contention of the ld. AR that the finding recorded in the assessment order may constitute a best evidence in the penalty proceedings however, they are never conclusive as both these proceedings are quite separate and distinct. It is equally well settled that no penalty can be imposed u/s 271(1)(c) merely on estimates. It cannot be denied that there is lot of jurisprudence on this aspect of the matter. From the findings recorded by the ld. CIT(A) in the quantum appeal order dt.11.01.2019 and considered by him in the

penalty order that the AO made the trading addition of Rs.1.80 Cr by applying his G.P. rate of 4.50% which was reduced by the Id. CIT(A) to G.P. rate of 3.82% as against the declared 3.62%. Accordingly, trading addition was partly sustained at Rs.40,84,751/- and the balance addition Rs. 1,39,96,209/- was deleted. These facts clearly show that the addition was made and sustained only on estimate basis. There is no positive fact finding has been recorded to support the contention of the penalty u/s 271(1)(c) of the IT Act. We find support from the decisions of the Hon'ble jurisdictional High court in the cases of CIT vs. **Krishi Tyre Retreading & Rubber Industries (2014) 360 ITR 0580 (Raj.)** where it is held that:

“9. On a perusal of the facts stated hereinbefore, it transpired that the addition has been sustained purely on estimate basis and, in our view, no positive fact or finding has been found so as to even make the said addition. It is, according to us, a pure guess work and, in our view, on such guess work or estimation, no penalty u/s. 271(1)(c) of the Act can be said to be leviable. For imposing penalty u/s. 271(1)(c) of the Act, the Assessing Officer has to clearly prove the conduct of the assessee, which in this case, has not been proved. Merely because the books of account of the assessee were rejected or estimated addition was made, in our view, no penalty is leviable. The assessee offered an explanation, which could not be termed as not bona fide. In the absence of any corroborative evidence to prove the charge of concealment, in our view, the penalty could not be imposed.”

It was held in the case of **CIT v/s Mahendra Singh Khedla 252 CTR 0453 (2012) (HC Raj.)** that:

“Tribunal having found that the additions made by the AO were based only on estimates, penalty u/s 271(1)(C) could not be levied: no substantial question of law is involved”

In CIT v/s Dr. Giriraj Agarwal Giri (2012) 72 DTR 79 (Raj): (2012) 346 ITR

152 (Raj) : (2012) 253 CTR 109 (Raj) it was held that

“Search and Seizure—Block assessment—Penalty—Concealment of income—Issuance of show cause as notice to why penalty u/s 158BFA(2) may not be imposed—Assessee’s contention that alleged undisclosed income of was purely on basis of estimation and no such documents or evidence to this effect was found during the course of search—Imposition of penalty by AO—CIT(A) deleted the penalty—Held, It was found that addition made on estimate basis—Therefore, fact or allegation based on estimation, not correct—Penalty was wrongly imposed by AO—Penalty not leviable, hence deleted—Revenue appeal rejected”

The ld. CIT(A) while confirming the penalty stated that addition was made on the basis of several discrepancies pointed out in the accounts by the AO and therefore it was not a case of the estimated addition as claimed by the assessee. He also held that the case laws relied upon the assessee were having different facts. We are not in agreement with such findings of the ld. CIT(A). The AO might have pointed out several discrepancies but ultimately that has culminated into the rejections of books of account and estimated trading addition was made by the AO at the end of the day which was substantially reduced by the ld. CIT(A) on estimate basis. The ld. CIT(A) didn’t demonstrate as to how the cases cited before him were not applicable. It is also worthwhile to mention that no penalty can be imposed on estimate basis. Thus, considering the totality of the facts and circumstance, we are of the considered view that the impugned penalty needs to be quashed. There

appears yet another reason not to confirm the impugned penalty being that the AO has not specified which limb of the provision, he wanted the assessee to reply. It is not known whether he has charged the assessee for concealment of income or for furnishing of inaccurate particulars of income which operates into different fields. He has not selected the appropriate word. This fact is evident from the show cause notice(SCN) issued by him u/s 271(1)(c)/274 (at paper book pg no. 52) reading as under:

*“271(1)(c) Concealed the particulars of income **and** furnished inaccurate particulars of income.”*

As per the provisions, the AO can initiate penalty on various grounds. However, the AO is required to record his specific satisfaction as regards the existence of any one of those grounds on which he is satisfied that penalty proceedings are attracted and this satisfaction should be made known to the assessee through the SCN u/s 274. For one single item of income being the estimated trading addition, legally there cannot be a charge viz. concealment of income as also of furnishing of inaccurate particulars. This does not meet with the requirement of law. The Hon'ble Karnataka High Court in the case of CIT vs. M/s Manjunatha Cotton & Ginning Factory & Ors. (2013) 359 ITR 565 (Karn) held that sending printed form where all the grounds mentioned in S. 271 would not satisfy the requirement of law. The assessee should know the ground which he has to meet specifically,

otherwise, the principle of natural justice is offended on the basis of such proceedings, no penalty could be could be. Accordingly, in view of the above facts and circumstances of the case as well as the decisions cited (supra) we hold that the notices issued u/s 274 r.w.s. 271(1)(c) of the Act dated 04.03.2020 is not valid and the same is quashed. Consequential levy of penalty is also deleted.

In the result, the appeal of the assessee is allowed.”

Order pronounced in the open court on 29/04/2024.

Sd/-

(डा० मीठा लाल मीना)

(Dr. Mitha Lal Meena)

लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 29 /04/2024

*Mishra

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

1. The Appellant- M/s. Shiv Agrevo Ltd. Kota
2. प्रत्यर्थी / The Respondent- The DCIT, Circle -2, Kota,
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 623/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar