

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 208 & 209/JP/2013 and 444 &
445/JP/2016

निर्धारण वर्ष / Assessment Year : 2002-03 to 2005-06

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| Shri Renu Kumar Jain Prop. M/s Mechanization(India) 5,Vinod Nagar, Beawar. | बनाम Vs. | The DCIT, Central Circle, Ajmer. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABXPJ 5953 H | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri Mukesh Agarwal (C.A.)
राजस्व की ओर से / Revenue by : Sri Shanmuga Priya (JCIT)

सुनवाई की तारीख / Date of Hearing : 26/02/2018
उदघोषणा की तारीख / Date of Pronouncement: 06/04/2018

आदेश / ORDER

PER BENCH:

These are four appeals by the assessee are directed against the orders dated 13.12.2012 & 28.03.2016 of CIT (A) for the assessment years 2002-03 to 2005-06 respectively. The assessee has raised the common grounds in these appeals. The grounds raised for the assessment year 2002-03 are reproduced as under:-

"1. The learned CIT(A) erred in law and on facts in confirming the penalty of Rs. 3,96,800/- levied u/s 271(1)(c) ignoring the facts, evidences and submissions placed on record. Thus, the penalty so imposed should be deleted.

2. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing."

2. The assessee has also filed additional ground along with application for admission of additional ground in all four appeals. The addition ground raised by the assessee is common in all the appeals hence, the additional ground raised for the assessment year 2002-03 is reproduced as under:-

"The Id. CIT(Appeals) erred in law and on facts in confirming the levy of penalty of Rs. 496000/- u/s 271(1)(c) even when the assessee was not apprised of the specific charge for its levy, i.e., whether it was for 'concealment of income' or 'furnishing of inaccurate particulars' in the penalty notice and not even in the assessment order. Thus, the penalty so levied should be deleted."

3. We have heard the Id. AR as well as the Id. DR on admission of the additional ground whereby the assessee has challenged the validity of notice issued u/s 274 r.w.s. 271(1)(c) for want of specifying the default whether concealment of income or furnishing inaccurate

particulars of income. The Id. AR of the assessee has submitted that the additional ground raised by the assessee is legal in nature and goes to the root of the matter. Further, for adjudication of the additional ground no fresh investigation of fact is required except those already on record. Thus, the Id. AR has also submitted that in view of the decision of the Hon'ble Supreme Court in case of **NTPC vs. CIT 229 ITR 383** the Tribunal may admit the additional ground which is legal in nature and arising from the facts which are on record of the assessment proceedings. The Id. AR has relied upon the various decisions on this point and submitted that the additional ground raised by the assessee may be admitted for adjudication on merits.

4. On the other hands, the Id. DR has raised strong objection against the admission of additional ground and submitted that the assessee was given sufficient opportunity by the AO in the penalty proceedings as well as by the Id. CIT(A) in the first appellate proceedings but the assessee did not raise such objection against the validity of notice issued u/s 274 of the Act. The Id. DR has further contended that in the absence of disclosing a reasonable cause which has prevented the assessee from raising such ground before the

authorities below the additional ground raised at this stage cannot be accepted.

5. We have considered the rival submissions as well as the relevant material on record. We find that the additional ground which is common for all these four appeals raised by the assessee is purely legal in nature and goes to the root of the matter. Further, since the notice issued u/s 274 r.w.s. 271 of the Act for initiation of penalty proceedings u/s 271(1)(c) of the Act in all these cases is identical and the Revenue has not disputed the alleged defect in the notice that the AO has not specified in the notice that the penalty proceedings u/s 271(1)(c) of the Act has been initiated for concealment of income or for furnishing inaccurate particulars of income. Thus, in the facts and circumstances of the case when the additional ground raised by the assessee does not require any investigation of facts for its adjudication and relevant record and facts are available on the assessment record then, in view of the decision of Hon'ble Supreme Court in case of NTPC vs. CIT (Supra) the additional ground raised by the assessee is admitted for adjudication on merits.

6. On merits of the additional ground the Id. AR of the assessee has submitted that since the notice issued u/s 274 has not specified the

charge for levy of penalty whether it was concealment of income or furnishing inaccurate particulars of income then the said notice suffers from illegality and therefore, in view of the decision of Hon'ble Karnataka High Court in case of **CIT vs. Manjunatha Cotton and Ginning Factory 359 ITR 565** the order passed by the AO u/s 271(1)(c) of the Act is not sustainable in law and liable to be quashed. The Id. AR has also relied upon the decision of Hon'ble Supreme Court in case of **CIT vs. SSA's Emerald Meadows 242 taxman 150** wherein the Hon'ble Supreme Court has dismissed the SLP filed by the Revenue and therefore, the decision of Hon'ble Karnataka High Court in case of CIT vs. Manjunatha Cotton and Ginning Factory (supra) was upheld. Thus, the Id. AR has contended that the notice issued u/s 274 r.w.s. 271 of the Act was bad in law and therefore, consequential penalty levied u/s 271(1)(c) of the Act is also bad in law.

7. On the other hands, the Id. DR has submitted that in this case there was search u/s 132 of the Act wherein the father of the assessee admitted that the assessee has advanced Rs. 12 lacs to Shri Premji Mehta out of his undisclosed income. Further, as per seized material the transactions were also duly found recorded at page 43 of Annexure A-5 however, in the return of income filed u/s 153A of the Act the assessee

did not disclose this income. The assessee surrendered this amount before the settlement commission u/s 245D of the Act however, the application submitted by the assessee stand abated in terms of section 245HA(2) of the Act. Therefore, the Assessing Officer was duty bound to assess the said income surrendered by the assessee. The assessee has consequently surrendered this amount and was added to the total income of the assessee. Thus, the Id. DR has submitted that this is not a case of addition made by the AO by the assessee himself had surrendered this income being undisclosed income of the assessee. Therefore, the AO was not required to specify the charge for initiation of penalty proceedings when the assessee himself surrendered this amount as undisclosed income. The Id. DR has relied upon the orders of the authorities below.

8. We have considered the rival submissions as well as the relevant material on record. There is no quarrel on the point that if the penalty proceedings were initiated by the AO in respect of the addition made to be total income of the assessee then the AO is required to specified the charge/default on the part of the assessee for levy of penalty u/s 271(1)(c) of the Act whether it was for concealment of income or for furnishing of inaccurate particulars of income. Though, in the case in

hand all the facts were already on record of assessment proceedings however, the same were not available before us particularly the statement recorded u/s 132(4), the seized material as well as alleged surrendered made by the assessee before the settlement commission and consequent surrender in the assessment proceedings. Since, these facts are relevant for deciding the issue whether the penalty has been levied by the AO on the sum which was surrendered by the assessee or against the addition made by the AO. The assessee has raised this issue first time before this Tribunal and in the absence of the said issue raised before the authorities below the relevant facts though available on the assessment record were not referred in the impugned orders by the authorities below. Even this additional ground was preferred by the assessee at the last movement and therefore, neither the assessee nor the Revenue has produced those facts and record before us. Hence, in view of the above facts and circumstances of the case, we set aside these appeals to the record of the Id. CIT(A) for considering the additional ground raised by the assessee which has been admitted by us for adjudication on merits in light of the relevant facts as well as the legal precedent as relied by the assessee. The other grounds raised by the assessee are kept open.

In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 06/04/2018.

Sd/-

(भागचंद)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06/04/2018.

*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Renu Kumar Jain, Beawar.
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle, 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. 208 & 209/JP/2013 and 444 & 445/JP/2016}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar