

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

डा० 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. 29/JP/2022  
निर्धारण वर्ष/Assessment Years : 2010-11

|  |             |                              |
|--|-------------|------------------------------|
| Jhodinda Bhojpura Gram Sewa Sahakari Samiti Ltd<br>VPO Panchala Tehsil Phagi, Jaipur | बनाम<br>Vs. | ITO<br>Ward-7(2),<br>Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATJ3928J                                   |             |                              |
| अपीलार्थी / Appellant  |             | प्रत्यर्थी / Respondent      |

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

सुनवाई की तारीख / Date of Hearing : 22/02/2022  
उदघोषणा की तारीख / Date of Pronouncement : 11/03/2022

आदेश / ORDER

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

This is an appeal filed by the assessee directed against the order of the National Faceless Appeal Centre, Delhi (hereinafter called as 'NFAC') dated 26.11.2021 penalty of Rs.3,87,000/- levied u/s. 271 (1) (c) of the Income Tax Act, 1961 (in short "the Act") for the Assessment year 2010-11.

2. The Assessee raised the following grounds of appeal:

*"1. That the subject order passed by the Ld CIT(A) is liable to be quashed as the order is passed in haste manner, without taking into consideration the written submission, facts, documents and evidences as furnished by appellant available on record.*

*2. That on the facts and in law, the Ld. CIT(A) and the Assessing officer in levying penalty under section 271(1)(c) of the Act have failed to appreciate and consider the facts of the case that:*

*a. The appellant was not required to file the return under the law as the appellant's income was below the amount not chargeable to tax (Duly submitted by the Appellant vide his submission dated 25 July 2021);*

*b. The appellant has not sold any capital asset during the year;*

*c. The cash deposited of INR 12,51,000/- was out of the surplus withdrawals made from the bank account for the purpose of making payments to the workers under NREGA*

*3. The Ld CIT(A) have violated the principle of natural justice as no opportunity of being heard was provided to the Appellant on specifically being asked for, therefore, the order should be deleted.*

*4. That on the facts and in law Ld CIT(A) failed to appreciate that penalty proceedings are separate and distinct from the assessment proceedings, and any additions/enhancements made in the assessment does not ipso-facto warrant levy of penalty.*

*5. That the appellant craves right to amend add, delete or withdraw any of the grounds of appeal either before or at the time of hearing of this appeal.”*

3. The brief facts of the case are the Jhodinda Bhojpura Gram Sewa Sahakari Samiti Limited is a Co-operative Society is doing business of trading of food grain and fertilizer and of mini banking and is also modal agency for payment under NAREGA, certificate for registration under Co-operative Society and mini bank kept on record.

3.1 Taxable income of Co-operative Society for Assessment Year 2010-11 was below taxable limit therefore it has not filed any return of income of A.Y 2010-11.

3.2 The Sahakari Samiti is engaged in trading of food grain and fertilizers and also doing work of mini bank. The Sahakari Samiti is also nodal agency for payments made under NAREGA. During the F.Y 2009-10 the Sahakari Samiti has received sum of Rs. 1,81,36,602/- from Government for payments to be

made to workers under NAREGA, copies of few sanction letters is enclosed here with. For making payments to workers Sahakari Samiti withdraws cash from bank in lumpsum and at the end of day or a period surplus amount, if any, remains with deposited back in Bank account.

3.3 For distributing the sum so received amongst the workers under Narega Scheme, during the F.Y 2009-10 the Sahakari Samiti has withdrawal sum of Rs. 2,24,27,500/- from bank, through its employee Shri Mahaveer and Shri Madan Lal. Out of withdrawals made excess sum remains in hand is deposited back in bank and during F.Y 2009-10 the Samiti has deposited sum of Rs. 12,51,000/- only, copy of bank account is enclosed herewith for your perusal. We are also submitting herewith the copy of financial statement of Sahakari Samiti of the F.Y 2009-10.

3.4 Accounts of Sahakari Samiti are also under audit of Registrar Co-operative Societies. The Registrar Co-operative Society has audited the accounts of F.Y 2009-10. Copy of it report is also enclosed herewith.

3.5 Since the Sahakari Samiti has deposited cash out of cash withdrawal from and has neither concealed any income nor has furnished inaccurate particulars of income therefore penalty imposed u/s 271(1)(c) on assessee should be delete.

4. The Assessing Officer also initiated penalty proceedings u/s 274 r.w.s. 271(1)(c) of the Act for concealing of particulars of income. The assessee offered the explanation in respect to the show cause notice stating that mere wrong claim does not amount to concealment of particulars of income or furnishing 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 letter dated 09.02.2021 in page Nos 2 to 5 of the order. The CIT(A) for the reason stated in his appellant order has rejected arguments and submissions made by the assessee.

6. The Ld CIT (A) observed that the assessee has deposited cash into bank account and no explanation has been provided for the same and it is clear that the assessee has failed to justify its contention. Accordingly the penalty has been correctly levied on the cash deposited into the bank account and the same is unexplained as the assessee as furnished inaccurate particulars of income through which reduced the income for tax. The Ld CIT (A) relied on the decisions of Hon'ble Supreme Court in the case of Union of India Vs Dharmendra Textile Processors (2008 ) 13 SCC 369 and in the case of CIT Ahmadabad Vs Reliance Petroproducts (P) Ltd (2010) 189 Taxman 322. Further CIT (A) observed that no further cogent evidences arguments have been put forth by the assessee during the course of penalty proceedings and it is quite clear that the assessee has furnished inaccurate particulars of income and that the assessing officer was justified in levying the penalty u/s 271(1)(c) and dismissed the assessee appeal.

7. Aggrieved by the CIT(A) order, the assessee is in appeal before us. Before the CIT (A), the assessee has reiterated that his submissions and which was not taken on record by the CIT (A). before us the Ld AR for assessee submitted a detailed Written submissions dated 18.02.2022 which are as under

“1. Background

1.1 *The Appellant is a registered Cooperative Society doing business of Mini Banking and trading of food grain and fertilizer and is also Nodal Agency for Payment under NREGA. [Refer page no. 20 and 25 of Paper Book ('PB')]*

1.2 *With respect to the subject AY the Ld. AO initiated proceedings u/s 147 of the Act and issued notices under section 148 of the Act at the address VPO Panchala via Phagi Jaipur.*

1.3 The proceeding was initiated as an information was received by the Ld. AO that cash of INR 12,51,000/- was deposited in the bank account of the Appellant and no return was filed by the Appellant. Therefore the Ld. AO initiated the proceedings to gather the information about the source of such cash deposited in the bank account. [Refer page 2 of Assessment order]

1.4 All the notices were sent by speed post and have been received by member of Sahakari Samiti. However the members who received these notices have erroneously failed to communicate the same to the executives of Sahakari Samiti. Since the executives were having no information about such correspondence therefore they could not comply with any notice issued by the Ld. AO.

1.5 Since no one appeared before the Ld. AO, the Ld. AO passed an ex-party order under section 147/144 of the Act assessing the income of the assessee by adding sum of INR 12,51,000/- as income on account of cash deposits made in bank account as unexplained investment and thereby raised a demand of INR 10,88,940 (along with interest). Further, the Ld. AO initiated the penalty proceedings under section 271(1)(c) of the Act and imposed penalty of INR 3,87,000/- vide its penalty order dated 08 March 2018 passed under section 271(1)(c) of the Act. In the penalty order passed the Ld. AO have mentioned following (relevant extract of order) [Refer page 2 of penalty order]:

“From the above discussion it is clear that the assessee has not disclosed the Short term capital gain of INR 12,51,000/- earned on sale of capital assets. The assessee has concealed his true income by way of non disclosing the STCG and has not furnished accurate particulars of his income thereby conceal his income”

1.6 Once all such notices and order came to the knowledge of executives of Sahakari Samiti, the Appellant filed an Appeal before CIT(A) against both the orders i.e. Assessment order and penalty order.

## 2. CIT Appeal Proceedings

2.1 At the assessment level since no submission was filed, therefore the Appellant furnished all the evidences in relation to the issue before the CIT(A)-3, Jaipur through Form 35 and as per Rule 46A of the Income-tax rules, 1962 [Refer page no. 34 and 37

of PB and Form 35]. As both the appeals i.e. penalty and quantum appeal were pending before the CIT(A)-3 Jaipur, the appellant requested before the CIT(A)-3 through various submissions to adjourn the penalty appeal/ proceedings till the disposal of quantum appeal. [Refer page no. 27 to 29 of PB].

2.2 Later the case got transferred to National Faceless Appeal centre (NFAC), against which the Appellant furnished a detailed submission and all the documents vide submission dated 22 July 2021, 19 Oct 2021, 08 Feb 2021 [Refer page no 1 to 8 and 30 to 33 of PB]

2.3 In the submission filed on 22 July 2021, the Appellant duly explained the source of cash deposit [Refer page no. 3 of PB], the same is summarized as under:

- As the appellant is an authorized nodal agency for payment under NREGA, therefore consideration is received from Government for payments to be made to workers under NREGA. For making payments to workers the Sahakari Samiti withdraws cash from bank in lump sum and at the end of day or a period surplus amount if any, remaining is deposited back in the Bank account.
- During the year under consideration the Sahakari Samiti has withdrawn sum of INR 2,24,27,500.00/- from bank and deposited back cash of INR 12,51,000.00/- in bank account. All cash deposit is out of surplus withdrawals made from bank.
- The excess cash deposited was on the following dates:

| <i>Date</i>       | <i>Amount of Cash Deposited</i> | <i>Source of cash deposit</i>  |
|-------------------|---------------------------------|--|
| 02 April 2009     | 41,000/-                        | Opening cash   |
| 22 April 2009     | 1,00,000/-                      | Cash withdrawn from bank on 13.04.2009 – INR 10,00,000/-                               |
| 02 July 2009      | 60,000/-                        | Cash withdrawn from bank on 29.06.2009 – INR 7,00,000/-<br>01.07.2009 – INR 50,000/-   |
| 29 August 2009    | 50,000/-                        | Cash withdrawn from bank on 21.07.2009 – INR 4,00,000/-<br>10.08.2009 – INR 1,20,000/- |
| 12 September 2009 | 3,00,000/-                      | Cash withdrawn from bank on 09.09.2009 – INR 10,00,000/-                               |

|   |             |   |
|---|-------------|---|
| 25 January 2010                         | 7,00,000/-  | Cash withdrawn from bank on<br>21.01.2010 – INR 10,00,000/- |
| Total cash deposited<br>during the year | 12,51,000/- |   |

*Bank statement was enclosed for verifying the details of cash deposited [Refer page no. 13-19 of PB] and also Bank certificate was provided. [Refer page no. 26 of PB]*

- *The taxable income of co-operative Society for Assessment Year 2010-11 was below taxable limit therefore it has not filed any return of income for A.Y.2010-11. The copy of audited accounts of Sahakari Samiti was provided during the proceedings. [Refer page no. 22-24 of PB]*

2.4 *Through the submissions filed it was clearly explained and substantiated that:*

- a. *No capital asset was sold during the year;*
- b. *The cash deposited was out of the surplus withdrawal made from the bank account for the purpose of making payments to the workers under NREGA, therefore the same cannot be termed as 'income' itself;*
- c. *Such cash deposited is evidence from the bank statement attached and bank certificate enclosed*

2.5 *Post furnishing the above submission, the NFAC did not issued any further notice and straight away passed an order u/s 250 on 26.11.2021. In the order passed the NFAC have mentioned about the submission filed on page 2 to 5 of the order and passed their decision under point 4. wherein:*

- *Some random figure of INR 17,73,675 was mentioned as addition of cash deposit [Para 4.1 of order];*
- *The NFAC stated that no explanation is provided for cash deposited by the appellant, without even mentioning about all the documents, evidences furnished during the proceedings [Para 4.3 of order]*
- *And at last stated the following under para 4.7:*  
*“In view of above facts and that no further cogent evidences or arguments have been put forth by the appellant during the course of appellate penalty proceedings, it is quite clear that the appellant has furnished inaccurate*

*particulars of income. Therefore, the Ld. Assessing Officer was justified in levied the penalty u/s 271(1)(C) of the Act. Thus, the penalty is confirmed.”*

2.6 *The above order passed is completely baseless as all the evidences were furnished by the appellant before the CIT(A)/ NFAC relating to deposit of cash. The CIT(A) have passed the order without taking into consideration the written submission, facts, documents and evidences as furnished by appellant during the proceedings.”*

8. The Ld AR for assessee submitted that all the evidences were furnished by the assessee before the CIT (A)/NFAC relating to deposit of cash. He further submitted that the assessee in his letter dated 22.07.2021 duly explained the source of cash deposit .The Bank statements and Bank certificate which was enclosed in paper book. Further the Ld AR for assessee submitted that the taxable income of co operative Society for Assessment Year 2010-2011 was below taxable limit therefore it has not filed any return of income for AY 2010-2011. Further he submitted that a copy of audited report was provided during the proceedings.

9. 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.

10. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Ld AR for assessee submitted documentary evidence in the compilation of Paper Book and Written submission before us.

10.1 The AO has failed to consider the fact that all the notices were send by speed post and have been received by member of Sahakari Samiti. He explained that the members who received those notices failed to communicate the same to the executives of Sahakari Samiti. Where they could not comply



with any notices issued by the Ld AO. In our opinion, considering the facts and circumstances of the case, the AO has erred in passing Ex-party order without giving opportunity to the assessee in furnishing the documentary evidences. The AO has not verified whether the notices sent was received by the assessee. If the disclosure of facts is incorrect or false and to the knowledge of the assessee and it is established, then such disclosure cannot take it out from the purview of the act of concealment of particulars or furnishing inaccurate particulars, thereof for the purpose of levy of penalty. The penalty u/s 271(1)(c) is liveable, if the Assessing Officer is satisfied in the course of any proceedings under this Act that any person has concealed the particulars of his income or furnished inaccurate particulars of such income. In the present case, the AO passed ex-parte order and has levied penalty for concealment of such income or non furnishing of particulars u/s 271(1)(c). Rightly pointing the issue is that the assessee has not replied or non compliances for the notice issued by the AO, where the penalty should be levied u/s 271(1)(b).

10.2 The learned Commissioner of Income-tax (Appeals) erred in holding that penalty u/s 271(1)(c) is liveable. It is submitted that the facts and circumstances of the case that there is neither concealment of income nor furnishing of any inaccurate particulars and hence provisions of section 271(1)(c) is not applicable without considering the evidences furnished before the CIT(A).

10.3 The learned Commissioner of Income-tax (Appeals) erred upholding the order by the AO, Where the assessee made an attempt to explain and submitted detailed written submissions before CIT(A) and produced the evidences of Bank Accounts, Bank certificate and details of cash deposits also.

10.4 The learned Commissioner of Income-tax (Appeals) erred in relying on the decisions of Hon'ble Supreme Court in the case of Union of India Vs Dharmendra Textile Processors (2008 ) 13 SCC 369 and in the case of CIT

Ahmadbad Vs Reliance Petroproducts (P) Ltd(2010) 189 Taxman 322 ,which is not applicable to this instant case.

10.5 The learned Commissioner of Income-tax (Appeals) erred in upholding AO order rather it could have remand back to AO for assessing of Income.

10.6 Taking in consideration of the fact and circumstances and evidences furnished by the Ld AR for assessee before us. With careful consideration and perused the documents in Paper book (pages 1 to 37 pages) dated 14.02.2021 and Written submission dated 18.02.2022. There is no failure on part of the assessee in explaining the source of cash deposit, the Bank Statement, Bank certificate

10.7 The learned Commissioner of Income-tax (Appeals) erred in not considering the assessee submission that the quantum appeal is pending before the CIT (A). It is well-settled that assessment proceedings and penalty proceedings are separate and distinct and as held by the Supreme Court in the case of Ananthraman Veera singhaiah & Co.Vs. CIT [1980] 123 ITR 457, the finding in the assessment proceedings cannot be regarded as conclusive for the purposes of the penalty proceedings. It is, therefore, necessary to reappraise and reconsider the matter so as to find out as to whether the addition made in the proceedings actually represents the concealment on the part of the assessee as envisaged in section 271(1)(c) and whether it is a fit case to impose the penalty by invoking the said provisions.

11. We find that there is no finding of the AO based on some contradictory evidence to disapprove that explanation offered by the assessee was false or the assessee was not able to substantiate the explanation furnished or fails to prove that such explanation is not bona fide and that all the facts relating to the same and material to the computation of his total income has not been disclosed by him. Therefore the order on the CIT(A) is accordingly set aside and thus

penalty u/s 271(1)(c) levied by the AO is not in accordance with law therefore same is cancelled. In the result appeal of assessee is allowed.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 11/03/2022.

Sd/-

( राठोड कमलेश जयन्तभाइ )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 11/03/2022.

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Jhodinda Bhojpura Gram Sewa Sahakari Samiti Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-7(2), Jaipur.
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. 29/JP/2022 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar