

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. Nos. 1073 & 1074/JP/2018
निर्धारण वर्ष/Assessment Years : 2013-14

Sh. Suresh Kumar Agarwal D-10, Gali No. 5, Shanti Path, Panipech, Jaipur	बनाम Vs.	JDIT, I and CI, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADCPA1327P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 24/02/2022
उदघोषणा की तारीख / Date of Pronouncement : 15/03/2022

आदेश / ORDER

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

These are two appeals filed by the assessee directed against the respective orders of the learned Commissioner of Income Tax (Appeals)-2, Jaipur (hereinafter called as 'CIT(A)') dated 05.06.2018 penalty of Rs.10,000/- & Rs. 42,000/-levied u/s. 272A (1)(c) of the Income Tax Act, 1961 (in short "the Act") for the Assessment year 2013-14.

2. The Assessee raised the following grounds of appeal:

"1. That learned CIT Appeals has erred in law and fact in upholding of penalty imposed by Learned Joint Director I & CI whereas assessee has given all the replies and information as asked by A.O. hence penalty imposed by Joint Director I & CI is illegal Ld. CIT Appeals are wrong

and unjustified in confirming the penalty as imposed by Joint Director I & CI deserves to be deleted.”

3. The brief facts of the case are as under:

“That assessee is an individual and having business of Building construction and dealing real estate at Jaipur and after construction completed sold the flats as per market price and maintaining Regular books of accounts which are duly supported by vouchers and Requisite records are duly audited by Auditor.”

4. The Assessing Officer also initiated penalty proceedings 272A (1)(c) of the Income Tax Act, 1961 (in short “the Act”) for the Assessment year 2013-14. The relevant extract of the assessment order which is reproduced in CIT(A) order is as follows :

“2.1 The relevant extract of the assessment order is as under:-

“In connection with proceeding pending before Deputy Director of Income Tax (I&CI), Jaipur under the Income Tax Act, 1961 a summon u/s 131(1A) of the Income Tax Act, 1961 was issued on 14.1.2013 for compliance on 17.10.2013. However, he was failed to comply with the summons.

Consequently a penalty show cause u/s 272A(1)(c) dated 02.01.2014 was issued providing an opportunity for explaining reason of non-compliance with summons u/s 131(1A) of the I.T. Act dated 04.10.2013. Shri Suresh Agarwal S/o Shri Rameshwar Prasad Agarwal D-10, Gali No. 5, Shanti Path, Panipech, Jaipur, Rajasthan was to attend on 20.01.2014 but he preferred not to avail the opportunity.

In view of all the above discussed facts and circumstances, it is beyond doubt that he has willfully failed to comply with summon u/s 131(1A) of the I.T. Act dated 04.10.2013.

Thus, a penalty of Rs. 10,000/- is hereby levied upon under section 272A(1)(C) the Income-Tax Act, 1961 for failure to comply with the summons as aforesaid.”

5. Before the CIT(A) the assessee submitted its explanation but the Commissioner of Income-tax(A) was not convinced and confirmed the levy of penalty. The Ld CIT (A) observed that I have perused the facts of the case and the penalty order. The appeal is against imposition of penalty under section 272A(1)(c) for non compliance with summons issued under section 131(1A) of the I.T. Act dated 04.10.2013. The appellant neither attended on the appointed date nor till the date of passing of the penalty order. It was held by JDIT (I & CI) that there was willfull non-compliance and penalty was imposed.

5.1 In the present proceedings, the appellant was provided hearing opportunities on 22.11.2016, 05.01.2017, 05.01.2018, 12.03.2018 and 23.03.2018 but there has been no compliance nor any request for adjournment. The above non compliance shows that the appellant is not interested in contesting the appeal. In view of the non-compliance to the summons issued without any reasonable cause, the penalty levied under section 272A(1)(c) is confirmed. Ground of appeal is dismissed.

6. Aggrieved by the CIT(A) order, the assessee is in appeal before us. The Ld AR for assessee submitted that he was a small business contractor and he was not aware of the notices sent to him. Once he received the notices, he was not aware of the procedure to levy tax and reply to the notice. He further submitted that there was delay in compliances with the summons.

7. The Ld. DR, on the other hand opened the arguments with the summons issued U/s 131(C) and 133(6) and 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 272A(1)c. The DR submitted that there must be a reasonable ground U/s Sec 273(B).

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The learned Commissioner of Income-tax (Appeals) erred upholding the order by the AO, Where the assessee admitted his delay in reply for the notice and delay in complying the summons. Further the learned Commissioner of Income-tax (Appeals) failed to observe the submissions made by the Assessee in the CIT (A).

9. We are of the view 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. We further arrive at a conclusion that ignorance of law is certainly no excuse for a default committed but, at the same time, there is no presumption in law that everybody knows the law. The application of this rule would differ from case to case and person to person. In a given case, there may be a person who is quite illiterate, living in remote village, rarely coming in touch with law enforcing machinery and not required to discharge any statutory obligations under a particular law. Ignorance of law may be a good excuse in his case. As submitted by the Ld AR for assessee that there is no willful failure to comply the with summons u/s 131(IA) of the IT Act dated 04.10.2013.

10. Therefore the order on the CIT (A) is accordingly set aside and thus penalty u/s 272A(1)(c) levied by the AO is not in accordance with law therefore same is cancelled. In the result appeal of assessee is allowed.

ITA No. 1074/JP/2018

11. The Assessing Officer also initiated penalty proceedings 272A (1)(c) of the Income Tax Act, 1961 (in short "the Act") for the Assessment year 2013-14. The relevant extract of the assessment order which is reproduced in CIT(A) order is as follows :

"2.1 The relevant extract of the penalty order is as under:-

"Section 133(6) of the Income-tax Act, 1961 read with Rule 114E of the Income-tax Rules requires the specified person(s) including a banking company or any officers thereof to furnish information in relation to such points or matters, or to furnish statements or accounts and affairs verified in the manner specified to furnish in due time any of the returns, statements or particulars in respect of such specific financial transactions which is registered or recorded by him during the financial year to the prescribed income-tax authority.

As per above reproduced provisions of Income Tax Act, a notice u/s 133(6) was issued to Shri Suresh Agarwal S/o Shri Rameshwar Prasad Agarwal, D-10, Gali No. 5, Shanti Path, Panipech, Jaipur, Rajasthan by the Dy. Director of Income Tax (Intelligence & Criminal Investigation), Jaipur vide letter No.2801 dated 19.02.2013 with request to furnish the information under code 001 transaction code 401 & 402 for F.Y. 2010-11 by 25.02.2013. However, neither the above mentioned person has attended on 25.02.2013, nor has furnished the information as required u/s 133(6) notice dated 19.02.2013.

In view of the non-compliance of notice u/s 133(6), a notice u/s 272A(2)(c) dated 02.01.2014 was issued to Shri Suresh Agarwal S/o Shri Rameshwar Prasad Agarwal, D10, Gali No. 5, Shanti Path, Panipech, Jaipur, Rajasthan requiring him to explain the cause of non-compliance to notice u/s 133(6) by 20.01.2014. He was specifically asked, as to why penalty should not be imposed upon him for failure to comply with notice u/s 133(6). Shri Suresh Agarwal S/o Shri Rameshwar Prasad Agarwal, D-10, Gali No. 5, Shanti Path, Panipech, Jaipur, Rajasthan has neither attended this office nor filed any required information up to till date.

After careful consideration of all the facts and circumstances of the case, I am satisfied that Shri Suresh Agarwal S/o Shri Rameshwar Prasad Agarwal, D-10, Gali No. 5, Shanti Path, Panipech, Jaipur, Rajasthan has willfully failed to comply with notice u/s 133(6) dated 19.02.2013 and show cause penalty notice dated 02.01.2014 thus is liable to be penalized for non-compliance u/s 272A(2)(c) and penalty is hereby levied @ Rs. 100/- per day for the period 25.02.2013 to 01.05.2014 amounting to Rs. 42,000/-.

In this case, the delay in filing of the information is 420 days which is a continuing default. Therefore, as per provisions of section 272A(2)(c) of the IT. Act, a penalty of Rs 42,000/- @ Rs. 100/- per day during which the default continued is hereby imposed.”

12. Before the CIT(A) the assessee submitted its explanation but the Commissioner of Income-tax(A) was not convinced and confirmed the levy of penalty. The Ld CIT (A) observed that I have perused the facts of the case and the penalty order. The appeal is against penalty levied under section 272A(2)(c) of the I.T. Act of an amount of Rs. 42,000/- by the JDIT (I&CI) for default in complying to provide information as requisitioned under section 133(6) of the I.T. Act, 1961.

12.1 The JDIT (I&CI) noted that the required information requisitioned under the above section was neither provided nor any attendance made in regard to the same even in the penalty proceedings there was no compliance before the Assessing Officer. In the present proceedings also as recorded above there has been no compliance nor any submission made. The penalty levied is confirmed. Ground of appeal is dismissed.

13. Aggrieved by the CIT(A) order, the assessee is in appeal before us. The Ld AR for assessee submitted that he was a small business contractor and he was not aware of the notices sent to him. Once he received the notices, he was not aware of the procedure to levy tax and reply to the notice. He further submitted that there was delay in compliances with the summons.

14. The Ld. DR, on the other hand opened the arguments with the summons issued U/s 131(C) and 133(6) and 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 272A(1)(c). The DR submitted that there must be a reasonable ground as per u/s Sec 273(B).

15. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The learned Commissioner of Income-tax (Appeals) erred upholding the order by the AO, Where the assessee admitted his delay in reply for the notice and delay in complying the summons. Further the learned Commissioner of Income-tax (Appeals) failed to observe the submissions made by the assessee in the CIT (A).

16. We are of the view 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. We further arrive at a conclusion that ignorance of law is certainly no excuse for a default committed but, at the same time, there is no presumption in law that everybody knows the law. The application of this rule would differ from case to case and person to person. In a given case, there may be a person who is quite illiterate, living in remote village, rarely coming in touch with law enforcing machinery and not required to discharge any statutory obligations under a particular law. Ignorance of law may be a good excuse in his case. As submitted by the Ld AR for assessee that there is no willful failure to comply the with summons u/s 131(IA) of the IT Act dated 04.10.2013. Subsequently, the assessee has filed the details called for & off course late, but looking to the inability or ignorance about dealing these type of notices, lienant view can be considered about the compliance made afterwards.

17. Therefore the order on the CIT (A) is accordingly set aside and thus penalty u/s 272A(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, both the appeals of the assessee are allowed.

Order pronounced in the open Court on 15/03/2022.

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:- 15/03/2022.

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sh. Suresh Kumar Agarwal, Jaipur
2. प्रत्यर्थी / The Respondent- JDIT, I and CI, 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 Nos. 1073 & 1074/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar