

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.164 of 2014 (O&M)
Date of decision: 15.9.2014**

Jawahar Lal Jain (HUF)

.....Appellant

Vs.

Commissioner of Income Tax, Chandigarh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present: Mr. Pankaj Jain, Sr.Advocate with
Mr. Divya Suri and Mr. Sachin Bhardwaj, Advocates for the
appellant.

Ajay Kumar Mittal,J.

1. The delay in refiling the appeal is condoned.
2. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 27.8.2013, Annexure A.22 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A' (in short, "the Tribunal") in ITA No.725/CHD/2011 for the assessment year 2007-08, claiming following substantial questions of law:-

"1. Whether under the facts and circumstances of the case, the penalty proceedings under section 271(1)(c) are distinct from the quantum proceedings under section 143(3), thus requiring independent examination and appreciation of material facts

containing material particulars on merits thereof?

ii) Whether under the facts and circumstances of the case and on consideration of the additional evidences, the admission thereof for case adjudication is necessarily to be examined?

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The business of jewellery is being carried by the HUF under the name and style of Nikka Mal Babu Ram (JJ Group) and the constitution of the group is namely Nikka Mal Babu Ram and Sons controlled by Shri Kamal Kant Jain and his son Mandeep Jain; Nikka Mal Babu Ram and Sons (the Jewellery Arcade) run by Akhil Jain and Smt.Pooja Jain and Nikka Mal Babu Ram and Sons (JJ Group) by appellant Jawahar Jain (HUF) and other coparcener Rohit Jain, Neeraj Jain (Sons) - proprietary concern of appellant (HUF). The appellant was covered by action of search under Section 132 of the Act on 27.10.2006. A consignment of gold belonging to the appellant being stock in trade (business asset) was received at residence No.67, Sector 8 Chandigarh on 26.10.2006. The trading account dated 27.10.2006 at Annexure A.2 was required to be prepared by the appellant during search proceedings qua the value of stock of gold, diamond which had been valued by the respondent department. Surrender of ₹ 2.50 crores was made attributable to cash found i.e. ₹ 50 lacs, excess gold ₹ 75.34 lacs, excess diamond (stock) ₹1.20 crores in statement made under section 132(4) of the Act on 30.10.2006. Thereafter, jurisdiction over the appellant was transferred to Deputy Commissioner of Income Tax (DCIT), Central Circle I, Chandigarh under section 127 of the Act through order being effective from 9.2.2007 as a consequence to search. The assessment proceedings were initiated on 24.6.2007 through issuance of notice under section 142(1) of

the Act for preceding six years namely w.e.f assessment year 2001-02 onwards. Notice under section 153A of the Act was issued requiring the assessee for filing the return of income in consequence to the search proceedings. In pursuance thereof, return of income dated 31.7.2007 was filed at ₹ 1,06,48,173/- containing the amount from regular sources of income amounting to ₹ 48,27,928/- and the balance amount of ₹ 58,20,245/- attributable to the discrepancies found and after reconciling with the corroborative material facts containing material particulars. A questionnaire was issued on 4.6.2008 to the assessee asking for reasons for variance of the declaration made being ₹2.50 crores whereas charged to tax was ₹ 58 lacs. Written submissions were furnished by the appellant on 26.12.2006 submitting that chargeability was in consonance with the declaration made before the ADI conducting search proceedings. The appellant further submitted written submissions before the respondent Director of Investigation to the effect that having made reconciliation with corroborative material and on adopting the respondent department's valuation report dated 8.11.2006 at ₹ 5,25,94,746/-, the difference came to ₹ 57 lacs qua diamond jewellery. Subsequently, the revised return of income was filed on 2.12.2008 declaring income of ₹ 2,98,41,628/- which included the amount of ₹ 48,41,628/- from the regular sources of income and additionally ₹ 2.50 crores attributable for the discrepancies for the purpose of settling the controversy but the said return had been treated as non est being beyond the permitted period under section 139(5) of the Act which ended on 31.3.2008. The assessment was completed under section 143(3) read with section 153A of the Act on 30.12.2008, Annexure A.13. The aforesaid assessment order was accepted and the tax was paid on 8.12.2008,

Annexure A.14 without having challenged the same in appellate proceedings before the Commissioner of Income Tax (Appeals) [CIT(A)], the Tribunal etc. Penalty proceedings under section 271(1)(c) of the Act were initiated through notice issued on 30.12.2008, Annexure A.15. Written submissions were furnished by the assessee. After examining the matter, penalty under section 271(1)(c) was levied on 23.6.2009, Annexure A.18 at ₹ 67,75,500/-. The said order was challenged before the CIT(A) by the assessee. Vide order dated 26.5.2011, Annexure A.20, the CIT(A) dismissed the appeal. Still not satisfied, the assessee filed appeal before the Tribunal and prayer was made for admitting the additional evidences under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963. Vide order dated 27.8.2013, Annexure A.22, the Tribunal dismissed the appeal, upholding the levy of penalty under section 271(1)(c) of the Act and rejecting the prayer for admission of additional evidences. Hence the instant appeal by the assessee.

4. We have heard learned counsel for the appellant and perused the record.

5. A perusal of application for additional evidence filed before the Tribunal (copy appended as Annexure A.21) shows that the assessee had tried to produce affidavits of certain customers to show that it was their gold which was lying with the assessee. Further, through the additional evidence the stock of diamond jewellery lying with the assessee is sought to be established as belonging to the suppliers one of which was M/s Ira Diamond. We find that not only these affidavits but also the statement of stock furnished by M/s Ira Diamond are only a result of an after-thought and an attempt to show which otherwise does not appear to be existing on facts.

The search was conducted at the premises of the assessee on 27.10.2006 and the assessee had made a statement on oath under Section 132(4) of the Act on 30.10.2006. The assessee while admitting unaccounted income of ₹ 2.5 crores had inter alia stated as under:-

“I have gone through the provisions and understood the same. I did consult my legal adviser on the said provisions. Therefore, I hereby state that the following assets have been found in excess than recorded in my regular books of account:-

- i) Excess cash at home ₹ 50 lakh
- ii) Excess gold stock of ₹ 75.34 lakh

M/s Nikka Mal Babu Ram

- iv) Excess stock of diamond ₹ 1.20 crores

Therefore, I hereby admit an amount of ₹ 2.5 crores as income in excess of my regular income in the current year and I promise to pay the taxes voluntarily on the income of ₹ 2.5 crores in the current assessment year. I further request that the amount of ₹ 50 lakh, which has been seized from my residence may be admitted towards payment of taxes.”

The application for additional evidence producing certain documents so as to retract from the said statement was filed under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 in 2012 after almost expiry of six years and that too during the course of penalty proceedings at second appeal stage. The additions of unexplained income had been made by the Assessing Officer during the assessment proceedings and the assessee had accepted the tax liability and paid taxes amounting to ₹ 63,81,840/- as no appeal was filed against the assessment order. In the revised return filed on 2.12.2008, the surrendered amount of ₹ 2.5 crores was shown therein when the assessee was cornered during the assessment proceedings. Even during the penalty proceedings before the Assessing Officer and the CIT(A), there was

nothing to show that the jewellery found at the premises of the assessee on 27.10.2006 was accounted money with the assessee. No satisfactory explanation had been furnished to demonstrate why the material sought to be produced now could not be produced earlier. Thus, in our opinion, in view of the above, the Tribunal was justified in rejecting the application for additional evidence filed by the assessee.

6. Adverting to the merits of the controversy, it may be noticed that the Assessing Officer after appreciating the material evidence on record concluded as under:-

“I have carefully gone through the submissions offered by the assessee and found that the explanation offered by the assessee was found to be a false one and not bonafide. Further the explanation is considered not to be correct and the same is without any merits on the following grounds:-

- i) Assessee has not declared the surrendered amount which was offered by him for taxation in his statement recorded under section 132(4) during the course of search and seizure operation.
- ii) He has not disclosed accurate particulars of taxable income in his return of income filed for the assessment year 2007-08.
- iii) Assessee has made attempts to avoid taxes by way of furnishing a revised valuation report prepared by some unknown person in absence of any authorized officer of the department.
- iv) Assessee has retracted from his statement which was recorded during the course of search and seizure operation. He was specifically asked regarding the genuineness and authentication of valuation report prepared in his presence and also in presence of two independent witnesses.
- v) Assessee has furnished inaccurate particulars in respect of bogus claim of receipt of consignment, receipt of goods from customers and claim of a calculation mistake in valuation of

jewellery.

vi) Assessee has also made a wrong statement that the whole stone jewellery and silver items were disclosed in VDIS 1997 scheme.

vii) Assessee has not disclosed the accurate value of platinum found and valued during the course of search and seizure operation.

Keeping in view the all above facts and circumstances, it has been established that the assessee has failed to disclose the true particulars of income in the return of income filed by him. Moreover, he has also furnished inaccurate particulars which were found wrong during the course of assessment proceedings. Therefore, I am of the opinion that the default of the assessee is liable to impose a penalty under Section 271(1)(c) of the IT Act, 1961, therefore penalty is imposed in this case as per the provisions of the Income tax Act.”

7. The CIT(A) affirmed the aforesaid order of penalty, which was upheld by the Tribunal with the following observations:-

“14. We have heard the rival submissions carefully and do not find force in the submissions of the learned counsel of the assessee. First of all admittedly during search excess cash, stocks of excess gold, diamond, platinum, silver was found and initially assessee voluntarily agreed to surrender all these items of cash and stock by way of surrender of ₹ 2.5 crores. During statement recorded, no objection was raised to the valuation. In the statement itself it was clarified that the assessee has discussed with his lawyer before making the surrender.

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17. In nutshell it can be said that the assessee had surrendered a sum of ₹ 2.5 crores and he could have easily sought immunity against the penalty under explanation 5 to section 271(1)(c). However, the assessee did not own his commitment and retracted from the declaration made during search and did not include the amount of surrendered income in the original return

filed by him. The assessee filed revised return on 2.12.2008 through which surrender amount has been included in the return but this has clearly been done after the assessee was again cornered during the assessment proceedings. In any case as observed by the learned CIT(A) mere filing of revised return would not grant any immunity to the assessee from levy of penalty. In this regard he referred to section 139(5) which reads as under:-

“(5) If any person, having furnished a return under sub section (1), or in pursuance of notice issued under sub section (1) of section 142 discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.”

The above clearly show that right to file the revised return is available only if an assessee discovers any omission or any wrong statement therein. In the case before us, there is no justification at all in revising the return. Firstly, the assessee surrendered the income during search on account of excess cash and stock then retracted from the same and submitted before the Investigation Wing that value of diamond jewellery is correct and some other mistakes are there. But no good reasons have been given after having accepted excess cash and stock of excess gold and diamond jewellery. Even valuation and the process of valuation by S/Sh. Bhartesh and R.K.Gupta was accepted in the statement recorded under section 132(4) as noted above. In this regard we recall the decision of Hon'ble Supreme court (by three judges) in case of G.C.Agarwal vs. CIT, 186 ITR 571 (SC) wherein their lordships have confirmed the order of Hon'ble Gauhati High Court in case of F.C.Agarwal vs. CIT, 102 ITR 408 wherein it was clearly held that merely because return has been revised without pointing out any omission or mistake in the original return then penalty cannot be deleted simply because revised return has been filed.

18. Thus the combined reading of section 132(4) and explanation 5 to Section 271(1)(c) would clearly show that immunity is available if the income is surrendered during search and the manner of earning such income is also disclosed and the assessee based on such disclosure paid tax on the same. In the case before us after having made surrender the assessee simply retracted from the statement and did not include the amount of surrender in the return of income. The income was included through revised return which has to be accepted by the Assessing officer because same was late. In any case the revised return was furnished only when the assessee was fully cornered during the assessment proceedings. In addition some more items of income were also found to be concealed particularly in respect of platinum and silver jewellery. Therefore, it is a clear case of concealment and penalty has been rightly levied and confirmed by the learned CIT(A)."

No error or perversity could be pointed out in the findings recorded by the Assessing Officer, CIT(A) and the Tribunal which may call for interference by this Court.

8. The learned counsel for the appellant had inter alia placed reliance on the following case law:-

- (i) **National Textiles vs. CIT**, (2001) 249 ITR 125 (Gujarat);
- (ii) **MAK Data Private Limited vs. CIT**, (2014) 1 SCC 674;
- (iii) **CIT vs. Mahaveer Irrigation (P) Limited**, (2011) 61 DTR 218 (Delhi);
- (iv) **Punjab Rice Mills vs. CIT and another**, (2012) 71 DTR 79 (All.);
- (v) **Shervani Hospitalities Limited vs. CIT**, (2013) 89 DTR 169 (Delhi);
- (vi) **CIT vs. DCM Limited**, (2013) 93 DTR 406 (Delhi).

Suffice it to notice, in view of the findings of fact of concealment having been affirmed as noticed herein above, no advantage can be derived by

9. Consequently, no substantial question of law arises. The appeal being devoid of any merit stands dismissed.

(Fateh Deep Singh)
Judge