आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्रीसंदीपगोसाई,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 55/JP/2023
निर्धारणवर्ष/AssessmentYear :2011-12

Shri Yogendra Khandelwal Ist Floor, Somani Building, S.C. Link Road Lohamandi. Jaipur	बनाम Vs.	The ACIT Range-3 Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ADCPK 0822 B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None
राजस्व की ओर से/Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख/Date of Hearing : 26/04/2023
उदघोषणा की तारीख/Date of Pronouncement: 18/05/2023

आदेश/ORDER

PER SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the ld. CIT(A), National Faceless Appeal Centre, (''for short NFAC''), Delhi dated 16-12-2022 for the assessment year 2011-12 raising therein following ground of appeal.

> '' That LdCIT(A) has erred in maintaining penalty of Rs.1,80,208/- u/s 271(1)(c) of the Act out of total penalty of Rs.3,55,087/- imposed by the AO

2.1 Brief facts of the case are that the assessee is proprietor of M/s. Steel Syndicate of India which is engaged in the business of trading of iron and steel materials. The assessee is also engaged in wind power generation at Jaisalmer. AO during the course of assessment proceedings noted that the assessee had paid commission for purchases at Rs.5,83,199/- to Shri Arpit Khnadelwal for which the assessee was asked to file the list of persons to whom payments made who are covered u/s 40A(2)(b) of the Act. On examination of the details relating to payment of commission, it was found that commission of Rs.5,83,199/- was paid only to Shri Arpit Khandelwal, son of the assesse while Shri Arpit Khandelwal was employed on regular basis with the company and drawing salary of Rs.2.60 lacs during the year under assessment. Thus the reasonability of genuineness of commission payment for purchases to the tune of Rs.5,83,199/- was not found justified and the AO disallowed the commission paid amounting to Rs.5,83,199/- and added to the income of the assessee under the head ''Income from business and profession'' and penalty proceedings u/s 271(1)(c) of the Act were initiated for concealment and furnishing of inaccurate particulars of income.

2.2 In penalty proceedings u/s 271(1)© the AO vide his order dated 26-03-2018 had confirmed the penalty by observing as under:-

''3.1 Further, on the issue of disallowance of Rs.5,83,199/- being commission for purchases paid to Shri Arpit Khandelwal, the assessee failed to establish how the purchase of goods facilitated by him on special assignment has benefitted the assessee in saving revenue. Shri Arpit Khandelwal is a regular employee of the assessee earning salary. No other employee of the assessee enjoyd privilege of earning commission either on sale or purchase. Thus the assessee has intentionally paid high commission to Shri Arpit Khandelwal to inflate his expenses and at the end the money so debited from firm's account will travel to assessee's family

Further, assessee's contention that the disallowances were made without proper basis and claim of expenses were genuine is not acceptable as the same were made by making proper enquiries and unearthed by due diligence which is confirmed by the disallowance of appeal by the ld. CIT(A).

4. In totality, the sum comes out to be Rs.11,49,150/- (Rs.5,65,951 + Rs.5,83,199/-).

2.3 In first appeal, the ld. CIT(A) has confirmed the penalty levied u/s 271(1)(c) of the Act by observing as under:-

''3.4 Considering the facts of the case, penalty order and decision of the Tribunal, I am satisfied that assessee furnished inaccurate particulars of income and AO was justified in levying the penalty u/s 271(1)(c) . Accordingly, levy of penalty to the extent relatable to disallowance of commission is upheld and appeal of the assessee is dismissed.''

2.4 During the course of hearing, none appeared on behalf of the assessee to contest the case before the Bench.

2.5 On the other hand, the ld. DR supported the order of the ld. CIT(A)

2.6 We have heard the ld. DR and perused the materials available on record. The Bench noted that the ld. CIT(A) has passed the ex-parte order without providing adequate opportunity of being heard to the parties. The Bench feels that the assessee should be provided one more opportunity to contest his case before the AO as the assessee could not advance his arguments as to the penalty imposed by the AO u/s 271(1)(c) of the Act. It is also noted that the assessee remained negligent to pursue his case for which the Bench awards cost of Rs.5,000/- and the same may be deposited in the Prime Minister Relief Fund and copy of the same shall be submitted to the AO for proof and thus the appeal of the assessee is restored to the file of the AO to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of assessment proceedings before the AO. Thus the appeal of the assessee is allowed for statistical purposes.

3.1 Before parting, we may make it clear that our decision to restore the matter back to the file of the A.O. shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by A.O. independently in accordance with law.

4.0 In the result, the appeal of the assesee is allowed for statistical purposes.

Order pronounced in the open court on 18/05/2023.

Sd/-	Sd/-
(राठोडकमलेशजयन्तभाई)	(संदीप गोसाई)
(Rathod Kamlesh Jayantbhai)	(Sandeep Gosain)
लेखासदस्य / Accountant Member	न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 18/05/2023
*Mishra
आदेश की प्रतिलिपिअग्रेशित / Copy of the order forwarded to:
1. The Appellant- Shri Yogender Khandelwal, Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT, Range-3 Jaipur
3. आयकरआयुक्त / The ld CIT
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 55/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar