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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Income Tax Appeal No. 144/2019

Vinod Singh S/o Let. Ram Gopal Singh, P. No. 13-14 Om Colony, Delhi By Pass, Jai Singh Pura, Khore, Jaipur 302002

----Appellant

Versus

Income Tax Officer, Ward 5(1) Jaipur Rajasthan

----Respondent

For Appellant(s)	:	Mr. Ishwar Tiwari
For Respondent(s)	:	Ms. Jaya P. Pathak with Mr. Sandeep Pathak

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HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MRS. JUSTICE SHUBHA MEHTA

Judgment

07/02/2024
Avneesh Jhingan, J (ORAL):-

1. This appeal is filed under Section 260A of Income Tax Act, 1961 (for short ‘the Act’) against the order dated 20.06.2019 of Income Tax Appellate Tribunal (for short ‘ITAT’), Jaipur Bench, Jaipur dismissing the appeal and upholding the penalty under Section 271 (1)(c) of the Act.

2. The brief facts of the case are that the appellant for assessment year 2010-2011 filed an income tax return showing income of Rs.1,45,245/-. The appellant had deposited Rs.25,85,000/- cash in the saving bank account with Standard Chartered Bank, MI Road, Jaipur, the case was taken in scrutiny. The assessment was finalized on 19.03.2013 under Section 143(3) of the Act. After giving the benefits of withdrawals and for the opening cash balance an addition of Rs.15,79,000/- was made as

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appellant failed to explain the source. Addition of interest received of Rs.28,418/- on Bank deposit and of Rs.5,00,000/- invested in share and mutual fund was made.

3. The Commissioner Income Tax (Appeals) while partly allowing the appeal of the appellant upheld the addition of unexplained cash deposit and of Bank interest but gave relief with regard to investment made in shares and mutual funds to the tune of Rs.3,30,000/- against the claim made by the appellant of Rs.5,00,000/-. The appellant failed in the quantum of appeal before the ITAT. The proceedings initiated under Section 271(1)(c) of the Act culminated in imposition of penalty of Rs.6,50,000/-. vide order dated 14.03.2016. The first appeal was dismissed on 16.11.2018 and the appeal before the Tribunal met the same fate on 20.06.2019. Hence the present appeal.

4. The counsel for the appellant submits that the addition was made on estimate basis by taking peak balance of the cash deposits hence, the penalty under Section 271(1)(c) of the Act is not sustainable.

5. The counsel for the respondent defends the impugned order submits that the quantum addition has attained finality. The additions were made on the basis of the unexplained cash deposits made in the Bank account and benefit of withdrawals were given. It is further argued that the appellant had not declared the amount deposited in the bank account and also the interest received in saving bank account.

6. Nine substantial questions of law have been framed, however, the only issue which arises in the present case is as to whether penalty under Section 271(1)(c) of the Act is sustainable?

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6. The appellant had not filed income tax returns for years preceding to AY 2010-2011. As per the record produced by the appellant a sum of Rs.12,75,000/- was deposited in cash in the bank account between 11.06.2009 till 19.06.2009 and there was no withdrawal in between. Thereafter during the assessment year, cash deposits were made. This information with regard to cash deposit and the interest accruing on the saving bank account maintained by the appellant with Standard Chartered Bank was not declared in the returns filed. Appellant failed to explain the source of cash deposited and the addition made was upheld till ITAT and has attained finality. The contention raised that the addition has been made on presumption is ill-founded. The addition of the cash deposits was made after deducting the withdrawal relying upon the material available with the department and after considering the explanation of the appellant.

7. In challenge to the penalty order, no explanation of the cash deposits made. The reply filed was that there is no concealment of income and there is no unexplained income. No question of law much less substantial question of law is involved.

8. The appeal is dismissed.

(SHUBHA MEHTA),J **(AVNEESH JHINGAN),J**

Chandan/Himanshu/52

Whether Reportable ***Yes**/No*

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