

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA No.1117/Bang/2015
Assessment year : 2007-08

Sri Basavayya R. Nandegol, Civil Contractor, Shastrinagar, Athani Road, Vijayapura. PAN: ABCPN 441K	Vs.	The Assistant Commissioner of Income Tax, Circle 1, Bijapur.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravi Shankar, Advocate
Respondent by	:	Dr. P.K. Srihari, Addl. CIT(DR)

Date of hearing	:	24.11.2015
Date of Pronouncement	:	28.12.2015

ORDER

Per Asha Vijayaraghavan, Judicial Member

This appeal by the assessee is directed against the order dated 01.06.2015 of the CIT(Appeals), Belagavi for the assessment year 2007-08.

2. The assessee is an individual and a civil contractor having business income. The assessee filed his return of income for the impugned assessment year declaring income from business at Rs.40,94,690. The

case of the assessee was selected for scrutiny and details were called for by the AO. The Assessing Officer concluded the assessment u/s. 143(3) of the Act determined business income at Rs.82,44,690.

3. The AO made addition of Rs.40 lakhs u/s. 68 of the Act being two loans received to the extent of Rs.20 lakhs each on the ground that the assessee was unable to discharge his onus of proving the genuineness of the transactions, identity of the parties, their creditworthiness, etc.

4. The assessee, aggrieved by the order u/s. 143(3) of the AO preferred appeal before the CIT(Appeals). The CIT(Appeals) confirmed the order of the AO by his impugned order dated 12.01.2011. On further appeal by the assessee, the Panaji Bench of the Tribunal vide its order dated 9.6.2014 in ITA No.89/PNJ/2011 partly allowed the assessee's appeal by deleting the addition of Rs.20 lakhs with regard to the transaction of Shri S.G. Shahapur and confirmed the addition as regards the transaction with Sri Punalika Lambu Parashuram amounting to Rs.20 lakhs. Aggrieved, the assessee filed an appeal before the Hon'ble High Court of Karnataka at Dharwad.

5. The AO, after receiving the order of the ITAT, Panaji, proceeded to show cause the assessee as to why penalty u/s. 271(1)(c) of the Act should not be levied. He came to the conclusion that assessee has concealed the particulars of income and imposed penalty of Rs.6,73,200.

6. On appeal, the CIT(Appeals) by his *ex parte* order confirmed the penalty order of the AO. Aggrieved by the impugned order of the CIT(Appeals), the assessee has preferred this appeal before us.

7. Before us, the Id. counsel for the assessee submitted that the CIT(Appeals) had passed *ex parte* order and hence the assessee was not in a position to substantiate his case. The assessee was not given an opportunity to establish existence of reasonable cause with respect to Explanation 1 to section 271(1)(c).

8. We have heard both the parties. We are of the opinion that Explanation 1 to section 271(1)(c) comes into operation when in respect of facts material to computation of total income of any person, there is failure to offer an explanation or the explanation offered is found to be false by the Assessing Officer or the explanation offered is not substantiated or the assessee fails to prove that such explanation is bonafide. In such a case ,the amount added or disallowed in computation of total income is deemed to represent the income in respect of which particulars have been concealed. Explanation 1 enacts the rule of evidence whereby the onus is on the assessee and if he fails to discharge the burden, the presumption as to furnishing of inaccurate particulars of income can be drawn. The Hon'ble Supreme Court in the case of *CIT v. K.R. Sadayappan*, 185 ITR 49 (SC) has held that such presumption is to be discharged by "cogent, reliable and relevant materials".

9. Merely because an assessee is not able to substantiate his explanation, penalty may not be imposed if such explanation is bonafide and all the facts relating to the same and material to the computation of total income have been disclosed by him.

10. In the present case, before the CIT(Appeals) neither did the assessee appear in person or through the AR. The assessee was not given an opportunity to present his case. We therefore set aside the issue back to the file of the CIT(Appeals), who shall decide the issue afresh, after providing adequate opportunity to the assessee. The assessee shall adduce evidence and offer explanation and submit objections against invoking the provisions of section 271(1)(c) of the Act by the revenue authorities.

11. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 28th day of December, 2015.

Sd/-

(INTURI RAMA RAO)
Accountant Member

Sd/-

(ASHA VIJAYARAGHAVAN)
Judicial Member

Bangalore,
Dated, the 28th December, 2015.

/D S/

Copy to:

1. Appellant
2. Respondents
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.