

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “B”, BANGALORE**

Before Shri A.K.Garodia, AM & Shri George George K, JM

ITA No.1075/Bang/2017 : Asst.Year 2009-2010

Shri G Shivakumar C/o.Balu & Anand Chartered Accountants No.46/2, 1 st Floor, 4 th Cross Malleswaram Bangalore – 560 003. PAN : BBKPS5780H	Vs.	The Income Tax Officer Ward 8(2) Bengaluru.
(Appellant)		(Respondent)

Appellant by : --- None ---
Respondent by : Smt.Padmameenakshi, JCIT

Date of Hearing : 30.10.2017	Date of Pronouncement : 03.11.2017
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 31.01.2017 upholding penalty imposed by the Assessing Officer u/s 271(1)(c) of the Act. The relevant assessment year is 2009-2010.

2. The grounds raised read as follows:-

“The Appellant objects to the order of the Commissioner of Income Tax (A) -6, Bangalore, on the following grounds:

1. That the impugned order is opposed to the facts and law insofar as it is pre-judicial to the interest of the appellant.

2. *The impugned penalty order is passed in pursuance of proceedings which is null and void in the eyes of law for the following reasons:*

(a) *That there is no recording of satisfaction of concealment of income or furnishing of inaccurate particulars by the assessing officer in the assessment order.*

(b) *The notice u/s 274 issued by the Ld. AO is inconsistent with the law laid down by the Honourable Jurisdictional High Court and thus rendering the proceedings invalid.*

(c) *The impugned penalty order first passed by the assessing officer without giving notice in change of incumbent in office as required under sec 129 of The Income Tax Act, 1961.*

Without prejudice to the above grounds, the Appellant submits as follows:

3. *That the Ld CIT(A) erred in confirming the penalty under Section 271(1)(c) of the Income Tax Act, 1961 and in doing so failed to appreciate the following:*

(a) *That the difference in the amount shown in Form 26AS was not the actual amount received by the appellant in the course of his business and the amount uploaded by the deductor was beyond the control of appellant.*

(b) *That the appellant chose not to file an appeal against the addition made to the income only in order to avoid prolonged litigation and this by itself does not tantamount to admission of concealment of income or furnishing of inaccurate particulars so as to attract penalty.*

4. *Without prejudice to and in addition to 1 to 3 above it is submitted that the order of penalty passed by the Ld. AO is bad in law and suffers from legal infirmity inasmuch as the approval for the same was granted by the Ld. Additional Commissioner of Income Tax without affording*

an opportunity to the assessee to present his case before him which is violation of principles of natural justice.

5. The Appellant prays for leave to add, modify, delete or introduce additional Grounds of Appeal at any time before the Appeal is disposed off.

Based on these and such other grounds that may be adduced from time to time, the Appellant requests the Honourable Income tax Appellate Tribunal to consider the petition in the light of principles of justice and cancel the Penalty order confirmed by the Commissioner of Income Tax.”

3. The brief facts of the case are as follows:-

3.1 During the course of assessment proceedings, the Assessing Officer observed that the assessee in his profit and loss account has shown income from commission of Rs.13,65,973. However, as per the information available with the Department, the assessee had earned commission of Rs.17,19,121 during the year under consideration. When the assessee was asked to clarify the difference, he agreed for the addition of the differential amount of Rs.3,53,148. Hence, this amount was brought to tax. It was also noticed by the Assessing Officer that the assessee has not declared contract receipt of Rs.92,758. The assessee, during the course of hearing, agreed for this amount also for addition. Consequently, the Assessing Officer levied penalty @ 100% of the tax sought to be evaded, at Rs.1,33,771.

3.2 The CIT(A) confirmed the penalty levied by the Assessing Officer.

4. None was present on behalf of the assessee. However, we proceed to dispose of the same after hearing the learned Departmental Representative.

5. After hearing the learned DR and perusing the relevant material on record, we find that both the authorities below have rightly levied and confirmed the penalty. Thus, we do not find any infirmity in the order of the CIT(A) upholding the penalty levied by the Assessing Officer. The same is upheld. It is ordered accordingly.

6. In the result, the appeal by the assessee is dismissed.

Order pronounced on this 03rd day of November, 2017.

Sd/-
(A.K.Garodia)
Accountant Member

Sd/-
(George George K.)
JUDICIAL MEMBER

Bangalore ; Dated : 03rd November, 2017.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT, Bengaluru.
4. CIT(A)-6, Bengaluru
5. DR, ITAT, Bangalore
6. Guard file.

True copy

BY ORDER,

(Asstt. Registrar)
ITAT, Bangalore