

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 212/Bang/2017
Assessment Year : 2009-10

The ITO, Ward 1 (3) (1), Bangalore	Vs.	Shri B. M. Muniraju, Science Institute Post Office, Malleswaram, Bangalore – 560 012. PAN: AYTPM5350L
APPELLANT		RESPONDENT

AND

C. O. No. 73/Bang/2017 In ITA No. 212/Bang/2017
Assessment Year : 2009-10

Shri B. M. Muniraju, Science Institute Post Office, Malleswaram, Bangalore – 560 012. PAN: AYTPM5350L	Vs.	The ITO, Ward 1 (3) (1), Bangalore
CROSS OBJECTOR		RESPONDENT

Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Shri M. K. Biju, JCIT (DR)

Date of hearing	:	11.10.2017
Date of Pronouncement	:	31.10.2017

ORDER

Per Shri A.K. Garodia, Accountant Member

This is a revenue's appeal and the C. O. is filed by the assessee and these are directed against the order of CIT (A) – 1, Bengaluru dated 30.09.2016 for Assessment Year 2009-10.

2. First, we take up the C. O. filed by the assessee. In the C. O., this is the ground raised by the assessee that the order of penalty is bad in law because it is not discernible from the notice issued u/s 274 rws 271 of the Act as to whether the

penalty proceeding is initiated for furnishing of inaccurate particulars of income or concealment of income and therefore, the penalty order should have been quashed by CIT (A).

3. Learned AR of the assessee submitted that the notice dated 29.12.2011 issued u/s 274 is available on page no. 1 of the paper book and in this notice, the allegation of the A.O. is not clear as to whether the penalty proceedings are initiated for concealment of income or for furnishing inaccurate particulars of income. He placed reliance on the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Manjunatha Cotton & Ginning Factory as reported in 359 ITR 565 and submitted that the facts in the present case are identical and therefore, the penalty order should be quashed. Learned DR of revenue placed reliance on a tribunal order rendered in the case of Shri P. M. Abdulla vs. ITO in ITA No. 1223 & 1224/Bang/2012 dated 17.10.2016. He submitted a copy of this tribunal order and pointed out that in this case, the tribunal has duly considered this judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Manjunatha Cotton & Ginning Factory as reported in 359 ITR 565 and thereafter, has confirmed the penalty order.
4. We have considered the rival submissions. Regarding the tribunal order on which reliance is placed by the learned DR of the revenue, we find that it is noted by the tribunal in Para 9 of this order that the column relevant to concealment of particulars of income has been ticked by the A.O. but in the present case, as per the notice available on page 1 of the paper book, there is neither any ticking nor any portion is crossed out. Hence, in the facts of the present case, this tribunal order is not applicable because any judgment has to be seen in the light of the facts of that case. As per the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Manjunatha Cotton & Ginning Factory (Supra), it was held that Notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. It was also held that Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law. The judgment also held that the assessee should know the grounds which he

has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee. Respectfully following this judgment, we hold that the present penalty order is not legally valid and hence, we quash the same.

5. In the result, the C. O. filed by the assessee is allowed.
6. Since penalty order is quashed as above, the appeal of the revenue does not survive and accordingly dismissed.
7. In the combined result, the C. O. of the assessee is allowed and the appeal of the revenue is dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member
Bangalore,
Dated, the 31st October, 2017.
/MS/

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

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

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.