

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.1883/Bang/2018
Assessment Year :2007-08

The Income Tax Officer, Ward – 1, Mandya.	Vs.	Mrs. Ayesha Najam, No. 165, 5 th Cross, Gandhinagar, Mandya. PAN: ADWPN1511E
APPELLANT		RESPONDENT
Appellant by	:	Shri R.N. Siddappaji, Addl. CIT (DR)
Respondent by	:	Shri Narendra Sharma, Advocate
Date of hearing	:	08.05.2019
Date of Pronouncement	:	16.05.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the revenue which is directed against the order of Id. CIT(A), Mysore dated 28.02.2018 for Assessment Year 2007-08.

2. In this appeal, although the revenue has raised several grounds but the only issue involved is regarding deletion of penalty of Rs. 37.89 Lakhs imposed by the AO u/s. 271(1)(c) of IT Act.
3. The Id. DR of revenue supported the penalty order. It was also submitted by him that not-ticking of relevant limbs in the notice issued u/s. 271(1) (c) of IT Act is only a human error and minor mistake which is covered u/s. 292B of the Act and therefore, Id. CIT (A) was not justified in deleting the penalty by following the judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton and Ginning Factory as reported in (2013) 359 ITR 565.
4. As against this, the Id. AR of assessee supported the order of CIT (A).He also submitted the copy of notice issued by the AO u/s. 274 r.w.s. 271(1) (c) of IT Act on 26.12.2016 and pointed out that as per this notice, the AO has not specified the allegations as to whether the allegation is regarding concealment of income or furnishing of inaccurate particulars of income. He

submitted that under these facts, the judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (supra) is squarely applicable. In the rejoinder, the Id. DR of revenue placed reliance on judgment of Hon'ble Apex Court rendered in the case of Sundaram Finance Ltd. Vs. DCIT as reported in [2018] 99 taxmann.com 152 (SC). He also submitted a copy of the judgment of Hon'ble Madras High Court rendered in the same case as reported in [2018] 93 taxmann.com 250 (Madras).

5. We have considered the rival submissions. We find that Id. CIT(A) has decided the issue in favour of the assessee by following the binding judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (supra). Before us, the Id. AR of assessee has submitted the copy of notice issued by the AO u/s. 274 r.w.s. 271(1)(c) of IT Act and as per this notice, the AO has not specified regarding his allegation as to whether the allegation is regarding concealment of income or furnishing of inaccurate particulars of income. In the assessment order also, the allegation is not specified. As per the penalty order, this is the allegation of the AO that the assessee has concealed particulars of income and this is not the finding of AO in the penalty order that the assessee is guilty of both i.e. concealment of income and furnishing of inaccurate particulars of income. Now in the light of these facts, we examine the applicability of judgment of Hon'ble Madras High Court rendered in the case of Sundaram Finance Ltd. vs. ACIT (supra) which is confirmed by Hon'ble Apex Court also by dismissing the SLP filed by the assessee. In this case, this is the finding of Hon'ble Madras High Court in para no. 12 of the judgment that the assessee has not only concealed particulars of income but has also furnished inaccurate particulars of income. Hon'ble Madras High Court in this case has duly considered this judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (supra) but it appears that because of this factual finding in that case that assessee was guilty of both i.e. concealment of income and also furnishing of inaccurate particulars of income, there was no occasion to give a finding regarding the

applicability of the judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (supra) in that case. Moreover, we are bound by the judgment of Hon'ble Karnataka High Court and we cannot follow any other judgment of any other High Court in preference to judgment of Hon'ble Karnataka High Court. Hence we hold that we are not following the judgment of Hon'ble Madras High Court rendered in the case of Sundaram Finance Ltd. vs. ACIT (supra) and since Hon'ble Apex Court has only dismissed the SLP, it cannot be said that any ratio was laid down by Hon'ble Apex Court in that case. Hence respectfully following this judgment of Hon'ble Karnataka High Court, we decline to interfere in the order of CIT(A).

6. In the result, the appeal filed by the revenue is dismissed.

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

Sd/-
(LALIET KUMAR)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 16th May, 2019.
/MS/

Copy to:

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.