

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ C ” BENCH: BANGALORE  
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA. No.2393/Bang/2018  
(Assessment Year: 2014-15)

Shri S.J. Abhilash, Bhavani Rice Industries, NH-4,Sira Road, Rangapura, Tumkur-572 102 PAN: AHAPA 0731F (Appellant)	Vs.	Asst. Commissioner of Income Tax, Circle 1, Tumkur. (Respondent)
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Assessee By:	Shri S. Krishnaswamy, C.A.
Revenue By:	Dr. P. V. Pradeep Kumar, Addl. CIT (D.R)

Date of Hearing :	09.07.2019
Date of Pronouncement :	07.08.2019

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, JM :**

The assessee has filed an appeal against the order of learned Commissioner of Income Tax (Appeals)-7, Bangalore passed under Section 271(1)(c) and 250 of the Income Tax Act, 1961.

2. The assessee has raised the following grounds of appeal :

1. The order of learned CIT (A) and Assessing Officer is against law and facts.
2. Rs.1,62,654/- Sundry creditor not proved - levy of penalty.
  - i. The learned CIT(A)/ ACIT erred in basing the levy of penalty in respect of wrong addition of a sum of Rs.1,62,654/- being a sundry creditor M/s. Sukhjika Industries, Hyderabad ignoring (1) the oral submission and written submission and (3) documentary evidences explaining that the credit was in respect of a purchase supported by (1) purchase invoice, (2) bank statement showing the payments and (3) entries in regular books of account - on the sole ground that confirmation from the creditor was not filed before the AO; it was filed before CIT(A) who rejected it as an additional evidence not permissible under Rule 46A of the Income Tax Rules; the appellant had sought permission for allowing this additional evidence.
  - ii. The learned CIT (A) and the ACIT ought to have appreciated that the appellant had produced at the time of assessment the primary evidence of (1) purchase invoice in a format prescribed by relevant law; (2) Bank statement showing e payment to the creditor and (3) the details of transaction as recorded in the books of account regularly maintained and audited and hence the addition in the original assessment is patently wrong and cannot form the basis for penalty.
  - iii. The learned ACIT erred in levying penalty invoking Sec.271 (1)(c) on the ground that the appellant furnished inaccurate particulars of income; there was nothing inaccurate in respect of the creditor.

3. The learned CIT (A) ought to have appreciated that the production of confirmation letter from the creditor was not within his control, it was received late and Rule 46A (1) (b), providing exception, reading “(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer; or” applied to the facts of the case.
4. The learned CIT (A) and ACIT erred in holding that a confirmation letter by the creditor was essential even when the creditor had issued purchase invoice and payment to firm had been made from the bank account; the citations referred by the learned CIT (A) are not applicable to the facts of the instant case where evidence in control of the appellant had been furnished at the assessment stage. No flaw was found in the invoices produced or bank statements confirming payments in respect thereof. A confirmation letter is distinguishable from a contemporaneous document like purchase invoice and confirmation letter is at best a validation exercise and cannot by itself **render the purchase “bogus” which term was not used in the assessment order.**
5. The learned CIT (A) ought to have considered the law as explained in-  
*Perfect Home finance Pvt Ltd V. Deep CIT (2017) 581 ITR*  
*Reliance Petro Products Pvt Ltd (2010) 322 ITR 158 (SC)*  
*Asst CIT v. Mahesh Bhagawath Chaudary (2018) 65 ITR (Trib) 343 (Pune) @P355 para 8/9.*

6. Rs.2,00,000 salary paid to wife- held excessive and hence penalty levied:

- i. The learned CIT (A) erred in confirming the levy of penalty in respect of the disallowance of salary paid to wife as "excessive" invoking Sec.40A(2)(b) even when the genuineness of payment was not in question and the disallowance was purely subjective and a matter of opinion and cannot be the basis for levy of penalty on the ground that a claim disallowed amounted to furnishing inaccurate particulars.

3. The Brief facts of the case are that the assessee is engaged in the business of running a Rice mill and filed the Return of Income on 27.09.2014 with total income of Rs.19,41,490. Subsequently, the case was selected for scrutiny and the Assessing Officer issued Notice under Section 143(2) & 142(1) of the Act along with Questionnaire. The main business of the assessee is rice milling and procure paddy from various locations and process it to produce Rice. During the course of assessment proceedings the assessee submitted Books of accounts and copy of VAT Returns whereas the Assessing Officer on perusal of the records, found that the assessee could not furnish the confirmation in regard to sundry creditor of Rs.1,62,654 from Sukhjika Industries, Hyderabad. Hence applied the provisions of Section 68 of the Act and made addition Rs.1,62,654. The Assessing Officer found that the assessee has paid salary to the wife and there are no proofs were filed with request to contribution to the Business of the assessee. Hence the Assessing Officer is of the opinion that the salary paid to the assessee's wife Rs. 2

lacs is not allowed under Section 40A(2)(b) of the Act and assessed total income of Rs.23.04,150 under Section 143(3) of the Act Dt.14.10.2016. Subsequently, the Assessing Officer initiated penalty proceedings and issued notice. The assessee filed details and reply in the penalty proceedings and relied on the judicial decisions. The assessee's contention was that to buy peace with the Department, he has not challenged the assessment order under Section 143(3) of the Act and further the confirmation of creditor was not available due to lapse of time and assessee was in the process of getting the confirmation. Whereas the Assessing Officer has not accepted the contentions of the assessee and was of the opinion that the assessee has provided inaccurate particulars and levied a penalty of Rs.1,10,000 based on the additions in the assessment order and passed order under Section 271(1)(c) of the Act Dt.28.04.2017. Aggrieved by the penalty order, the assessee filed an appeal with the learned CIT(Appeals). The learned CIT(Appeals) after considering the submissions of the assessee and the findings of the Assessing Officer has rejected the additional evidence filed by the assessee being confirmation letter from the creditor under Rule 46A of the I.T. Rules with the observation that the assessee has failed to produce the documents before the Assessing Officer and hence rejected the additional evidence and confirmed the penalty levied by the Assessing Officer and dismissed the assessee's appeal.

Aggrieved by the order of the learned CIT(Appeals), the assessee has filed an appeal with the Tribunal.

4. On the issue of levy of penalty, the learned Authorised Representative has relied on the judicial decisions and submitted Paper Book and filed written submissions. The contention of the learned Authorised Representative that the assessee is not to appeal against the assessment order under Section 143(3) of the Act with bona fide belief and to obtain peace from the Income Tax Department whereas the Assessing Officer has levied penalty without considering the facts and the judicial decisions relied on by the assessee. The Id. AR further emphasized that the assessee produced additional evidence before the learned CIT(Appeals) being confirmation of the creditor which could not be filed in the course of assessment proceedings. However the learned CIT(Appeals) has rejected the additional evidence submitted by the assessee.

5. In respect of second disputed issue on sustaining the penalty on due to addition of salary paid to the assessee's wife. The Id. AR's contention is that the assessee has voluntarily accepted the addition and explained the assessee's wife's contribution to the business, and these facts are accepted by the Revenue in the earlier assessment years. Hence Id. AR prayed for admission of the additional evidence and allow the assessee's appeal. Contra, the learned Departmental Representative supported the order of CIT(Appeals) and submitted that the

assessee is in agriculture business and having agriculture income and has to follow the due process of maintaining the books of accounts. Such income and no evidence was filed before the lower authorities and prayed for dismissal of the assessee's appeal.

6. We heard the rival contentions and perused the material on record. Prime facie, the contention of the ld. AR that the penalty under Section 271(1)(c) of the Act is not sustainable as the assessee has not contested the quantum i.e. Assessment Order under Section 143(3) of the Act to buy peace with the Department whereas the CIT(Appeals) has overlooked the evidence produced before in the appellate proceedings and confirmed the penalty order of Assessing Officer. On this issue, we find the CIT(Appeals) has rejected the additional evidence under Rule 46A of the IT Rules. We are of the opinion that the assessee shall not gain any benefit by delaying the litigation and support our view on the principle of natural justice, and admit the additional evidence filed by the assessee. On the second disputed issue with respect to the addition made by Assessing Officer in due to unreasonable salary paid to the assessee's wife under Section 40A(2)(b) of the Act, we are of the opinion that in the penalty proceedings, the assessing authority shall deal the issues independently and any addition in the quantum proceedings cannot be a gateway for levying the penalty. Therefore considering the overall facts and circumstances of the case, we restore the

disputed issues to the file of CIT (Appeals) to adjudicate afresh considering the additional evidence filed by the assessee and allow the grounds of the assessee for statistical purposes.

8. In the result, the appeal of assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 7th Aug., 2019.

Sd/-

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 07.08.2019.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore