

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos. 2425/Bang/2018 & 197/Bang/2019
Assessment Year : 2014-15

Shri Aurangeb, Uppalli, Chikmagalur. <b>PAN: AJCPA1101B</b>	Vs.	The Income Tax Officer, Ward – 1, Chikmagalur.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravish Rao, CA
Revenue by	:	Shri Vikas Suryavamshi, Addl. CIT (DR)

Date of hearing	:	30.07.2019
Date of Pronouncement	:	13.09.2019

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

Both these appeals are filed by the assessee for Assessment Year 2014-15 and out of this, one appeals is in quantum proceedings and the second appeal is in penalty proceedings u/s. 271(1)(C) of the IT Act. Both these appeals are directed against two separate orders of Id. CIT(A), Mysore both dated 22.06.2018.

2. The grounds raised by the assessee in ITA No. 2425/Bang/2018 are as under.

*“1. The learned Assessing Authority and the First Appellate Authority have erred in levying penalty u/s 271(1)(c).*

*2. The Learned Assessing Officer has erred in levying penalty u/s 271(1)(c) for “furnishing inaccurate particulars of income thereby concealing the particulars of income”.*

*3. The Levy of Penalty u/s 271(1) (c ) by the Learned Assessing Officer is against the principles and ratio laid down by the Hon'ble High Court of Karnataka in the case of CIT Vs Manjunatha Cotton and Ginning Factory [ITA No.2564/2005] and the Hon'ble ITAT, Bangalore Bench*

*in the case of Ittina Properties Private Limited [ITA No.36/Bang/2014]*

*4. The Learned FAA has erred in dismissing the appeal for non furnishing of the Notice of Demand, when the notice of demand is filed online under electronic mode as per Rule 45 of the Income Tax Rules.*

*5. The appellant hereby prays do admit additional grounds at the time of hearing.”*

3. The grounds raised by the assessee in ITA No. 197/Bang/2019 are as under.

<i>Grounds of Appeal</i>		<i>Tax effect relating to each Ground of appeal</i>
<i>1</i>	<i>The Learned First Appellate Authority has erred in dismissing the appeal</i>	<i>-</i>
<i>2</i>	<i>The Learned First Appellate Authority has erred in not Considering the Notice at demand filed as per Rule 45 of the Income tax Rules</i>	<i>-</i>
<i>3</i>	<i>The Learned AA and FAA have erred in considering the Agricultural income of the Asseesee as income from Other Sources</i>	<i>9,56,510/-</i>
<i>4</i>	<i>The appellant hereby prays do admit additional grounds at the time of hearing.</i>	<i>-</i>
<i>Total tax effect (see note below)</i>		<i>9,56,510/-</i>

4. First we take up the quantum appeal in ITA No. 197/Bang/2019. It was submitted by Id. AR of assessee that both the orders passed by Id. CIT(A) are ex-parte qua the assessee. He drawn our attention to para 3 of the order in quantum proceedings and pointed out that in this para, it is noted by Id. CIT(A) that the assessee has failed to furnish either the original notice of demand issued u/s. 156 of the Act or to furnish a certified true copy thereof together with an affidavit to the effect that the original notice of demand was either not served or lost, etc. He submitted that as per Rule 45 of Income Tax Rules, 1962, the assessee was to file the appeal before Id. CIT(A) electronically and hence, it should be accepted that when the appeal is filed electronically, it is not possible to file the original demand notice or the certified copy of the demand notice and hence, Id. CIT(A) should have decided the appeal on merit. He submitted that in the facts of present case

the matter may be restored back to the file of Id. CIT(A) for decision on merit. The Id. DR of revenue supported the order of Id. CIT(A).

5. We have considered the rival submissions. First of all, we reproduce para no. 3 from the order of Id. CIT(A) in quantum proceedings. This para reads as under.

*“3. The appellant is an individual. For the A.Y.2014-15, the Assessing Officer, by way of an order issued u/s. 144 of the Act, determined the tax and interest payable by the appellant at Rs.9,56,510/-, which is disputed in this appeal. As the appellant failed to furnish either the original notice of demand issued u/s. 156 of the Act or to furnish a certified true copy thereof together with an affidavit to the effect that the original notice of demand was either not served or lost, etc., the deficiency was intimated to the appellant vide letter No. ITBA/APL/S/25/2018-19/1009713371(1), dt.20/04/2018, requiring the appellant to remove the defect by submitting the requisite details/rectifying the defect within 30 days of receipt of that letter, failing which, the appellant was informed that the appeal may be treated as invalid. The aforesaid letter No. FTBA/APL/S/25/2018-19/1009713371(1), dt.20/04/2018, was issued in due compliance with the clarification issued by the jurisdictional Chief Commissioner of Income-tax, Bengaluru-1, Bengaluru in respect of appeal papers that are not accompanied by the respective demand notices in original, vide Ref. F. No.4/CCIT/BNG-1/2017-18/302 dated 20.07.2017. The aforesaid notice intimating the deficiency sent to the appellant by Speed post at the address furnished by the appellant, which was delivered on 28/04/2018 as per the tracking information obtained from the Consignment Tracking Website of the Department of Posts, Ministry of Communications, Government of India. There was no response from the appellant. No communication was received from the appellant stating that the appellant was prevented by any reasonable cause from responding to the aforesaid letter No. ITBA/APL/S/25/2018-19/1009713371(1), dt.20/04/2018. Therefore, for the aforesaid reasons, the appeal is considered defective and is not admitted.”*

6. From the above para reproduced from the order of Id. CIT(A), it is seen that this is the objection of Id. CIT(A) that the original demand notice or certified copy of demand notice was not furnished by assessee along with Form No. 35 filed by the assessee. As per Form No. 35 filed before us, it is seen that the appeal in Form No. 35 was filed by assessee electronically. It is also stated by Id. CIT(A) in para 3 reproduced above that notice were issued by him to assessee regarding the defect alleged by him but there was no reply

from assessee, so the order of Id. CIT(A) is ex-parte qua the assessee. Hence, we feel it proper to restore the matter back to the file of Id. CIT(A) for fresh decision after providing adequate opportunity of being heard to both sides. This is directed that assessee should make proper compliance before Id. CIT(A). Either the assessee should satisfy the Id. CIT(A) that when the appeal is filed electronically, there is no requirement to file original copy of demand notice or certified copy thereof or the assessee should submit before Id. CIT(A) the original demand notice or certified copy thereof and thereafter, the Id. CIT(A) should decide the issue on merit after providing adequate opportunity of being heard to both sides.

7. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

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

Sd/-  
(PAVAN KUMAR GADALE)  
Judicial Member

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 13<sup>th</sup> September, 2019.  
/MS/

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

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.