

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

ITA No.2317 to 2321/Bang/2018
(Assessment Years : 2010-11 to 2014-15)

Shri B . Basavaraj,
61, 3rd Cross, 13thMain,
Near Pipeline Road, Srinivas Naar,
Sunkadakatte, Bangalore-560091
PAN ATGPB 5689R

....Appellant

Vs.

Income Tax Officer,
Ward 6(2)(5), Bangalore.

.....Respondent.

Assessee By:	Shri V. Srinivasan, Advocate.
Revenue By:	Shri C. H. Sundar Rao, CIT (D.R)

Date of Hearing :	25.11.2019
Date of Pronouncement :	28.11.2019

ORDER

PER BENCH :

The assessee has filed appeals against the common order of Commissioner of Income Tax (Appeals), Bangalore passed under Section 271(1)(b) and 250 of the Income Tax Act, 1961 (the Act). Since all the five appeals are on similar

issues, they are heard together and consolidated order is passed. For the sake of convenience, we shall take up the appeal in ITA No.2317/Bang/2018 and the facts narrated therein.

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

1. The orders of the authorities below in so far as levying penalty u/s. 271[1][b] of the Act against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT [Appeals] is not justified in confirming the penalty levied u/s.271[1][b] of the Act, for the alleged non compliance of 5 notices issued in course of the assessment proceedings under the facts and in the circumstances of the appellant's case.

3. The learned CIT [Appeals] failed to appreciate that the appellant had not committed any default actionable u/s.271[1][b] of the Act as all the notices issued were patently illegal and consequently, the alleged non-compliance would not warrant levy of penalty and the penalty levied deserves to be cancelled especially the assessment itself was not yet made when the penalties were imposed.

4. The learned CIT [Appeals] failed to appreciate that there was no escapement of income having regard to the fact there was adequate TDS to cover the tax payable resulting in refund of TDS deducted only.

5. Without prejudice to the above, the learned CIT [Appeals] failed to appreciate that the appellant was prevented by reasonable cause in not complying with the notices as compliance with the notices would render such notices valid by the doctrine of participation in the light of the provisions of section 292B of the Act and therefore, the penalty levied deserves to be cancelled.

6. Without prejudice to the above, the penalty levied is excessive and liable to be reduced substantially.

7. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. The Brief facts of the case are that the assessee is a contractor and in the course of reassessment proceedings under Section 147 of the Act there were no proper compliance as observed by the Assessing Officer and hence Best judgement assessment order under Section 144 r.w.s. 147 of the Act dt.20.12.2017 was passed. Subsequently order under Section 271(1)(b) of the Act was passed for non-compliance of Notice under Section 148 and 142(1) of the Act.

Whereas the penalty order under Section 271(1)(b) of the Act dt.11.12.2017 was passed the levy of penalty of Rs.10,000. Aggrieved by the order, the assessee filed an appeal with the CIT(Appeals) and the CIT(Appeals) has dismissed the

assessee's appeal and has confirmed the levy of penalty under Section 271(1)(b) of the Act.

4. At the time of hearing, the learned Authorised Representative submitted that the CIT(Appeals) has not considered the submissions of the assessee in respect of compliance and there is no proper finding on submissions made at para 7 of the learned CIT(Appeals) order. Contra, the learned Departmental Representative supported the orders of learned CIT(Appeals).

5. We heard the rival contentions and perused the material on record. The sole crux of the disputed issue is in respect to levy of penalty under Section 271(1)(b) of the Act confirmed by the learned CIT(Appeals). The learned Authorised Representative's contentions are that the learned CIT(Appeals) has not considered the submissions made in the penalty proceedings at para 7 on the jurisdiction of provisions of Section 153C of the Act. The assessee has filed explanations as compliances. We found that the submissions of the learned Authorised Representative are realistic as the assessee has made elaborate submissions on the relevant facts but there is no finding by the learned CIT(Appeals) on this issue. Accordingly, the order of the CIT(Appeals) is cryptic and considering the principle of natural justice and the fact that the order is non-speaking, we set aside the order of CIT(Appeals) and restore the entire disputed issue to the file of CIT(Appeals) to adjudicate afresh and pass a logical and

speaking order. Further the assessee also should be provided adequate opportunity of hearing and co-operate in submitting the information for early disposal of appeal and allow the grounds of appeal of assessee for statistical purposes.

6. Similarly the assessee has filed an appeal ITA No.2318 to 2321/Bang/2018 on the identical issues. Hence the decision rendered in ITA No.2317/Bang/2018 shall apply to these cases also. Accordingly, the grounds of appeal of assessee are also allowed for statistical purposes and restore to the file of CIT(Appeals) for adjudication afresh on merits.

7. In the result, the assessee's appeals in ITA Nos. 2318 to 2321/Bang/2018 are allowed for statistical purposes.

Order pronounced in the open court on 28th Nov., 2019.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 28.11.2019.

*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