

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

**ITA No.156(Bang)/2019
(Assessment Year : 2013-14)**

Shri Suresh Chikkajala Ramakrishnappa,
No.81, Stone Building, Chikkajala Post,
Bangalore-562 157
Pan No.BADPS0728K

Appellant

Vs

The Deputy Commissioner of Income Tax,
Circle-6(1)(2),
Bangalore

Respondent

**Appellant by : Shri Narendra Sharma, Advocate
Revenue by : Smt. P. Renugadevi, JCIT**

Date of hearing : 25-11-2019

Date of pronouncement : 29-11-2019

ORDER

PER SMT BEENA PILLAI, JUDICIAL MEMBER:

Present appeal has been filed by assessee against order dated 09/11/18 passed by Ld. CIT (A)-6, Bangalore for assessment year 2013-14 on following grounds of appeal:

1.The orders of the authorities below in so far as levying penalty u/s 271[1] [c] 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[A] is not justified in upholding the penalty of Rs. 68,61,132/- levied u/s. 271[1][c] of the Act in respect of the additions made in course of the assessment proceedings that were accepted by the appellant under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] ought to have appreciated that there was no concealment of income or furnishing of inaccurate particulars in respect of the addition of Rs. 14,90,517/- made on account of estimate of the business income at 20% of the receipts as against 18% admitted by the appellant under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A] ought to have appreciated that there was no concealment of income or furnishing of inaccurate particulars in respect of the Short Term Capital Gains determined on the sale of lands of Rs. 2,01,85,740/- that was voluntarily brought to the notice of the learned A.O. in course of the assessment proceedings under the facts and in the circumstances of the appellant's case.

5. The learned CIT[A] failed to appreciate that the appellant has neither concealed any income nor furnished inaccurate particulars of income in respect of the above additions made to warrant levy of penalty and therefore, the penalty levied u/s.271[1][c] of the Act requires to be cancelled.

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

6. 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.

2. Brief facts of the case are as under:

Assessee filed its return of income on 01/05/14 declaring total income of Rs.2,22,08,070/-. Subsequently on issuance of statutory notices, and response by representative of assessee, assessment under section 143(3) was completed is determining total income at Rs.4,38,84,320/- by making following additions:

- addition of Rs.14,90,517/- by increasing the net profit or business income from sale of plots from 18% to 20%:
- addition of Rs.2,01,85,740/-under the head short term capital gain on sale of immovable property:

2.1 Against these additions, no appeal was filed before Ld.CIT (A) and assessee accepted the same. However, rectification application dated 23/03/16 is was filed before Ld.AO, on which order under section 154 was passed is determining total income at Rs.3,71,97,731/-.

2.2 Ld. AO initiated penalty proceedings under section 271(1)(c), while passing the assessment order.

Ld.AO initiated penalty proceedings against addition of Rs.2,01,85,740/- under the head short term capital gain on sale of immovable property. Ld. AO passed penalty order levying being 100% penalty for concealment of income.

3. Aggrieved by penalty order, assessee preferred appeal before Ld. CIT (A) who confirmed the same.

4. Aggrieved by order passed by Ld. CIT (A) assessee is in appeal before us now.

4.1 At the outset Ld.AR submitted that additional ground is raised on legal issue of challenging validity of notice under section 274 read with 271 of the Act, 1961. He submitted that in the said notice there is no striking off in appropriate limb of penalty and therefore notice is not specific. He submitted that as this ground emanates from records no separate evidence/documents needs to be verified and the said ground deserves to be admitted.

5. Ld.Sr.DR though objected, could not controvert that additional ground so raised forms part of original record.

We have perused submissions advanced by both sides in light of records placed before us.

5.1 The issue raised by assessee in additional ground emanates from the assessment record and do not require any fresh evidence to adjudicate upon. We therefore, respectfully following decision of *Hon'ble Supreme Court* in case of *National thermal Power company Ltd* reported in *229 ITR 383* and *Hon'ble Karnataka High Court* in case of *Gundathur Thimappa and sons* reported in *70 ITR 70*, we admit the additional ground so raised.

6. We have analysed the issue having regards to grounds of appeal filed and additional ground raised which has been admitted hereinabove.

6.1 On perusal of assessment order, it is observed that Ld. AO initiated penalty under section 271(1)(c) of the Act, without specifying whether there is a concealment of income or filing of

inaccurate particulars. Thus, penalty was initiated on both limbs. The notice initiating penalty proceedings under section 274 read with 271 is also on both the limbs as there is no strike off of either of limbs. We note that notice issued under section 274 read with 271 is in consonance with assessment order passed.

6.2 However, order passed by Ld.AO under section 271(1)(c) is for concealment of income. Thus, on totality of these incidents, it is clear that assessing officer intended to levy penalty for concealment, which either specified in notice nor in assessment order. We are therefore of opinion that entire penalty proceedings is without application of mind. Thus Ld.AO is not clear as on what limb penalty is to be levied, while passing penalty order under section 271 (1) (c) of the Act.

6.3 This, in our opinion, Ld.CIT(A) failed to analyse these facts and therefore deserves to be set-aside. We thus, quash penalty order passed by Ld.AO. As penalty order passed has been quashed, the ground raised stands allowed.

In the result appeal filed by assessee stands allowed.

Order pronounced in the open court on 29-11-2019

Sd/-

(B.R.BASKARAN)
ACCOUNTANT MEMBER

Dated: 29-11-2019

***am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

By Order
Asst. Registrar

