

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.1746 to 1749/Bang/2018
(Assessment Years : 2012-13 to 2015-16)

Shri Rajesh Suresh Vernekar,
No.15/1, Prop. Friends Fashion Jewellers,
Doddapet, Davangere-577001
PAN ACOPV 6780A

....Appellant

Vs.

Income Tax Officer,
Ward 1(5), Davangere.

.....Respondent.

Assessee By:	None.
Revenue By:	Shri Sunil Kumar Aggarwal, Addl. CIT(D.R)

Date of Hearing :	25.11.2019
Date of Pronouncement :	27.11.2019

ORDER

PER BENCH :

The assessee has filed appeals against the common order of Commissioner of Income Tax (Appeals), Bangalore for the Assessment Years 2012-13 to 2015-16 passed under Section 271F and 250 of the Income Tax Act, 1961 (the Act). Since all the four appeals are on similar issue, they are heard together and consolidated

order is passed. For the sake of convenience, we shall take up the appeal in ITA No.1746/Bang/2018.

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

5. That the law makers of the State had enacted two independent and parallel mode for furnishing return of income by the assesses one U/s.139(1) of the Act and another U/s.139(4) of the Act.

6. The sub-section (4) of Section 139 of the Act speaks as under : -

“ 139 (4) Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier : “

7. The appellant, by paying tax U/s.4 of the Act, had furnished his return of income U/s.139(4) of the Act and which act was statutorily a reasonable cause in his failure to comply with Section 139(1) of the Act. In view of the fetter or prohibition laid down by the law makers of the State U/s.273B of the Act, the assessing authority has no jurisdiction to levy impugned penalty invoking power U/s.271F of the Act. The impugned penalty levied U/s.271F of the Act being illegal and not tenable.

8. The statement of objections filed by the appellant in obedience to pre-penalty notice please be read as part and parcel of this grounds of appeal.

9. Without prejudice to the above grounds of appeal, the appellant also submits that :

- (a) It is a settled law as declared by the Hon'ble Supreme Court of India that the proceedings for levy of penalty under fiscal statutes being for levy of additional tax vide CIT - VS - ANWAR ALI (1970) 76 ITR 696 (S.C.). It is, therefore, submitted that the levy of penalty invoking power U/s.271F of the Act ought to have had been initiated simultaneously along with the assessment proceedings initiated U/s.143 (1) of the Act within the prohibited period laid down U/s.153 (1) of the Act, in respect of assessment year in question. Penalty proceedings U/s.271F of the Act for purpose of levy of additional tax being barred by limitation U/s.153 (1) of the Act.
- (b) It is also a settled law as declared by the Hon'ble Supreme Court of India that a tax cannot be imposed (executed) by way of penalty although penalty can be imposed for non-payment of tax or evasion of tax vide HARDEV MOTOR TRANSPORT -VS - STATE OF M. P. reported in (2006) 8 SCC 613 para 32.
- (c) In the light of the above legal principles declared by the Hon'ble Supreme Court of India, the assessee submits that impugned pre-penalty notice issued U/s.271F of the Act being inconsistent with the law declared by the Hon' ble Supreme Court of India and being violative of Constitutional principles enshrined under Article 141 and Article 144 of the Constitution of India being void and unenforceable under the Act. Hence, the impugned penalty levied U/s.271F of the Act on the basis of invalid pre-penalty notice being illegal and not tenable.

10. All the decisions which were relied upon by the learned First Appellate Authority are being given per incuriam and hardly be treated as precedent for this case because the substantial question of law, on the basis of legal principles declared by the Supreme Court, which the appellant has been raising before this Hon'ble Court had not been raised and argued at the Bar and there was no occasion to consider and decide by those Courts in those decisions. In support of above submission, the appellant relied upon the legal principles declared by the Hon'ble Supreme Court of India in the case of STATE OF U.P. AND ANOTHER V/S. SYNTHETICS AND CHEMICALS LTD. AND ANOTHER (1991) 4 Supreme Court Cases 139.

11. In view of the above grounds of appeal, the appellant prays that this Hon'ble Court be pleased to :

- (a) set aside order of penalty dated 30.10.2017 issued U/s.271F of the Act by the assessing authority for the assessment year 2012 – 2013.**
- (b) Set aside the order dated 15.03.2018 issued by the First Appellate Authority, the Commissioner of Income-tax (Appeals), Davangere.**

3. The sole disputed issue is in respect of levy of penalty under Section 271F by the Assessing Officer and was confirmed by the learned CIT(Appeals).

4. At the time of hearing, none appeared on behalf of the assessee or any adjournment petition was filed. Based on the submissions of the learned Departmental Representative and material available on record, the case was heard. We considering the submissions of the learned Departmental Representative and material find the assessee has challenged and the order of penalty under Section 271F of the Act. The assessee has filed an appeal against the penalty order with CIT(Appeals) and whereas the learned CIT(Appeals) has granted only one date of hearing and confirmed the penalty. We found the order passed by the learned CIT(Appeals) is exparte order. Therefore considering the principle of natural justice and the fact that only one date of hearing is granted and further the assessee was not heard on merits of the issue. We consider it proper to remit the entire disputed issue to the file of learned CIT(Appeals) for adjudication afresh. Accordingly we restore the disputed issue to the file of learned CIT(Appeals) to adjudicate on merits and pass a speaking order and further the assessee should be provided adequate opportunity of hearing and shall co-operate in early disposal of the appeal and allow the grounds of appeal of the assessee for statistical purposes.

5. The assessee has filed appeals against penalty order under Section 271F of the Act and the decision of ITA No.1746/Bang/2018 shall apply to ITA Nos.1747

to 1749/Bang/2018 and accordingly these appeals are also restored to the file of learned CIT(Appeals) for adjudication afresh on merits.

6. In the result, the appeals in ITA Nos.1746 to 1749/Bang/2018 are allowed for statistical purposes.

Order pronounced in the open court on 27th Nov., 2019.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 27.11.2019.

*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