

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALOR -B- BENCH - BANGALORE
BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER
I.T.A No.855 to 862/BANG/2019**

Assessment Year: 2008-09 to 2014-15 & 2014-15

Shri B. K. Shivappa, Bileshivale Village, Doddagubbi, Post, Bangalore East Taluk, Bangalore 560077 PAN: AVNPS 2292 Q	Vs.	Assistant Commissioner of Income Tax, Central Circle-1(2) Bangalore
Appellant		Respondent

Assessee by	Shri S. Krishnaswamy, CA
Revenue by	Shri Muzaffar Hussain, CIT(D.R.)

Date of hearing:	22.01.2010
Date of Pronouncement on	22.01.2020

आदेश / O R D E R

PER O. P. MEENA, AM:

1. The above captioned 8 appeals by the Assessee are directed against the separate orders of learned Commissioner of Income tax (Appeals)-11, Bangalore (in short “the CIT (A)”) all dated 20.02.2019 for the Assessment Years 2008-09 to 2014-15 & 2014-15 respectively, which in turn has arisen from the separate six assessment orders passed under section 153A read with section 144 all dated 28.03.2016 for A.Y. 2008-09 to 2013-14, one assessment order passed under section 153D read with section 144 for A.Y. 2014-15 dated 28.03.2016 and penalty order dated 29.08.2016 for A.Y. 2014-15 passed u/s 271AAB of IT Act,1961 (in short ‘the Act’), by the

Assistant Commissioner of Income Tax, Central Circle-1(2) Bangalore (in short “the AO”).

2. The above group appeals were heard together and being disposed-off by this common order.

I.T.A.No. 855 to 861/Bang/2019/A.Y. 2008-09 to 2014-15:

3. In the quantum appeals, for the assessment year 2008-09 to 2014-15, the assessee has taken various grounds of appeals which included the challenging the validity of proceedings of assessment made under section 153A read with section 144 of the Act being legal ground and various addition made under section 68 and unexplained deposits, capital gains, business income and agricultural income and other additions, made by the AO while finalizing assessment order under section 153A/153D read with section 144 of the Act.

4. At the outset, the learned counsel appearing for the assessee submitted that assessment orders for the assessment year 2008-09 to 2014-15 under consideration has been framed under section 153A/153D read with section 144 of the Act, ex-parte, without affording sufficient time and opportunities by the AO. The Id. CIT (A) has also confirmed the assessment made under section 144 read with section 153A/153D passed by the AO by observing that the assessee has not furnished explanation before the AO and adjudicated complicated issues on merit as well as legal issue, without

allowing rebuttal of the findings of the AO. The AO has failed to consider the evidence provided and explanation offered by the assessee. Therefore, the learned counsel for the assessee urged before us that one more opportunity of being heard may be granted to the assessee to make good his submissions with relevant evidence to the satisfaction of Revenue authorities by setting aside the appeal to the file of the AO for a de novo consideration.

5. The learned D.R. relied on lower authorities, but have no serious objection if issue is set-aside to the AO.

6. We have heard the rival contentions of both the parties. We find that the assessment in all the seven assessment years have been passed ex-parte under section 153A/153D read with section 144 of the Act by the AO. The AO though afforded number of opportunities but the assessee has failed to respond the same. The Id. CIT (A) has also upheld the *ex-parte* assessment made by the AO under section 153A /153D read with section 144 of the Act. The principle of *audi alteram partem* is the basic concept of natural justice. The expression "*audi alteram partem*" implies that a person must be given an opportunity to defend himself. This principle is *sine qua non* of every civilized society. The right to notice, right to present case and evidence, right to rebut adverse evidence, right to cross examination, right to legal representation, disclosure of evidence to party, report of enquiry to be

shown to the other party and reasoned decisions or speaking orders are must. We find the guidance for right of hearing, as is laid down by the Hon'ble Supreme Court in the case of Maneka Gandhi v. Union of India, wherein Hon'ble Supreme Court has held that rule of fair hearing is necessary before passing any order. We find that it is pre-decision hearing standard of norm of rule of *audi alteram partem*. We find that in this instant case, the assessee was not given proper hearing. Therefore, we are of the view that the assessee must be given one more opportunity of hearing and to represent his case. Therefore, in exercise of power conferred under Rule 28 of Tribunal Rules, we restore this appeal to the file of the Ld.AO for de novo consideration on all issues involved after allowing proper and reasonable opportunity of being heard in accordance with law. Nevertheless, to mention that the assessee will cooperate in the appeal proceedings and file necessary evidences on which he wants to rely upon.

7. In the result, the quantum appeal of the assessee for the assessment years from 2008-09 to 2014-15 under consideration is allowed for statistical purposes.

I.T.A.No. 862/Bang/2019/ A.Y. 2014-15/Penalty u/s.271AAB of the Act.

8. The assessee has agitated against the confirmation of penalty of Rs. 25,13,400 levied under section 271AAB of the Act on the ground that of confirmation of addition on account of cash deposits in bank account were

treated as unexplained cash credit under section 68 of the Act for the assessment year 2014-15.

9. We have heard the rival submissions and perused the relevant material on record. We find that the issue of unexplained cash credit on which penalty levied stands set aside to the file of the AO for fresh/de novo decision by the order of Tribunal in the quantum appeal for assessment year 2014-15 in above part of this order for de novo consideration. Thus, the issue on which penalty is levied is no longer survived; therefore, penalty levied is not maintainable as of now. Accordingly, we set-aside the penalty so levied subject to condition that the AO is free to re-initiate penalty proceedings under section 271AAB of the Act, on finalization of set-aside assessment proceedings, if the circumstances so warrant or he thinks fit.

10. In the result, the penalty appeal of the assessee for assessment year 2014-15 is allowed for statistical purposes.

11. The order pronounced in the open court on 22.01.2020.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Dated:22nd January 2020
am*

Sd/-
(O.P. MEENA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

By Order
Asst.Registrar