

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

Before Shri Chandra Poojari, AM & Smt.Beena Pillai, JM

ITA No.2344/Bang/2019: Asst.Year 2006-2007

Sri.Appaiah Prakash #4, 47 th Cross, 8 th Block Jayanagar Bangalore – 560 070. PAN : AEJPP9918H.	Vs.	The Income Tax Officer Ward 4(4) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.Ravishankar, Advocate
Respondent by : Smt.Swapna Das, JCIT (DR)

Date of Hearing : 29.01.2020	Date of Pronouncement : .01.2020
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ORDER

Per Smt.Beena Pillai, JM :

Present appeal has been filed by assessee against order dated 31/10/19 passed by Ld. CIT (A)-7, Bangalore for assessment year 2006-07 on following grounds of appeal:

- 1. the orders of the authorities below insofar as levying penalty under section 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 order levying penalty under section 271 (1) (c) of the act, is bad in law inasmuch as, the Ld. AO has neither reached any satisfaction nor has such satisfaction been recorded in the assessment order and consequently, the very initiation of proceedings under section 271 (1) (c) of the act, is not in accordance with the requirement of section 271 (1) of the act and consequently, the order of*

penalty founded on the invalid initiation of penalty proceedings is liable to be cancelled.

- 3. The order of penalty passed under section 271 (1) (c) of the act is bad in law as the notice issued under section 274 read with section 271 of the act is not discernible whether the penalty proceedings is initiated for furnishing of inaccurate particulars of income or concealment of income under the facts and circumstances of the appellant's case.*
- 4. Without prejudice to the above, the authorities below are not justified in levying penalty of Rs. 15, 32, 053/-under section 271 (1) (c) of the act under the facts and in circumstances of the appellant's case.*
- 5. The authorities below failed to appreciate that the appellant has neither concealed any income nor furnished any inaccurate particulars of income to warrant levy of penalty and therefore, the penalty levied under section 271 (1) (c) of the act requires to be cancelled.*
- 6. Without prejudice to the above, the penalty levied is highly 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 sprays that the appeal may be allowed and Justice rendered and the appellant may be awarded cost in prosecuting the appeal and also order for the refund of the institution fees as part of the cost.*

Brief facts of the case are as under:

2. Assessee filed his return of income for year under consideration on 29/01/07 and assessment order was passed on 31/01/13 under section 147 read with 143 (3) making an addition of Rs.45,29,000/- in the hands of assessee.

2.1. Ld.AO initiated penalty proceedings under section 271 (1) (c) of the act and subsequently levied penalty of Rs.15,32,053/- vide order dated 28/07/14.

2.2. Against penalty order passed, assessee filed appeal before Ld.CIT (A) who confirmed penalty levied on the ground that the addition under quantum assessment proceedings has been confirmed by the 1st appellate authority.

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

3. At the outset Ld.AR submitted that Ground no.3 raised is a legal issue on notice under section 274 read with 271 of the Act. He submitted that in the said notice, there is no striking of in appropriate limb of penalty and therefore the notice is not specific. He placed reliance upon the decision of *Hon'ble Karnataka High Court* in case of *CIT vs Manjunatha Cotton and Ginning Factory* reported in 359 ITR 555.

4. Ld.Sr.DR submitted that initiation and levy of by Ld.AO is on both the limbs. And therefore the ground raised by Ld.AR does not have any merits. She placed reliance upon the order passed by authorities below.

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

5. We have analysed the issue having regards to the grounds of appeal filed in the light of records placed before us.

On perusal of assessment order, it is observed that Ld.AO initiated penalty under section 271(1)(c) of the Act, on both the 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 concealment or filing of inaccurate particulars. Thus the notice issued under section 274 read with 271 is in consonance with the initiation in assessment order passed. Therefore we reject this argument of Ld.AR.

5.1. On merits of the addition order passed by Ld.AO under section 143 (3) addition has been made by estimating the turnover of assessee. It is observed that the additions made by Ld.AO are as under:

- income estimated on the basis of turnover Rs.55,000/-
- unexplained investment on the basis of documents seized- Rs.44,51,000/-

5.2. Further, it is observed that, on the basis of document found during course of search, and for the reason that explanation offered by assessee was not satisfactory, addition has been made treating a sum of Rs.44,51,000/- as unexplained investment in the hands of assessee. Ld.ar submitted that addition made by Ld.AO of Rs.44,51,000/- is on the basis of a document to which assessee is not a party. In the penalty order passed by Ld.AO Ld.AO records that agreement

for sale has been signed by vendor which has created a right in favour of assessee by virtue of which assessee can enforce specific performance of sale of property from vendor. It is on these facts that penalty has been levied in the hands of assessee.

5.2. Ld.AR has indicated that appeal against the additions is pending before this *Tribunal*. During the penalty proceedings assessee had offered explanation in respect of the sale agreement on the basis of which addition has been made in the hands of assessee which was not accepted by Ld.AO. *Explanation 1* to section 271 (1) (c) mandates that, explanation offered by assessee should be found to be falls by Ld.AO. Ld.AO however has also not been able to disprove the submissions on the basis of any material evidences/facts. It is observed that Ld.AO could not prove that there was wilful or gross negligence on part of assessee resulting into concealment. We are of the opinion that penalty has been levied by Ld.AO only for the reason that explanation offered by assessee was not acceptable to the authorities below. This cannot be a reason for levying penalty.

5.3. We are therefore of opinion that, penalty order passed by authorities below is without any basis. We thus quash and set-aside penalty order passed by Ld.AO.

5.4. As we have caused and set-aside the penalty order passed by Ld. AO, other grounds raised by assessee becomes academic and therefore has not been adjudicated at this stage.

In the result appeal filed by assessee stands allowed.

Order pronounced on this 31st day of January, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(Smt.Beena Pillai)
JUDICIAL MEMBER

Bangalore ;

Dated : 31.01.2020.

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-7, Bengaluru.
4. The Pr.CIT-7, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore