

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ C ” BENCH: BANGALORE

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.896/Bang/2019
(Assessment Year: 2014-15)

M/s. Kshema Geo Holdings Pvt. Ltd.,
No.103/104, Prestige Atrium, No.1,
Central Street, Shivajinagar,
Bangalore-560 001
PAN AADCK 2942F

....Appellant

Vs.

Income Tax Officer,
Ward 4(1)(2), Bangalore.

.....Respondent.

Assessee By:	Shri Rajnish Rama Rao, C.A.
Revenue By:	Shri Karuppusamy, S.R., Addl CIT (D.R)

Date of Hearing :	18.12.2019.
Date of Pronouncement :	19.02.2020.

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals)-4, Bangalore passed under Section 271(1)(c) and 250 of the the Income Tax Act, 1961 ('the Act').

2. At the time of hearing, though the assessee has raised the grounds of appeal, but the only contention envisaged by the learned Authorized Representative that the assessee is deprived of reasonable opportunity of hearing before the assessing authority in levying the penalty and also CIT (Appeals) has confirmed the penalty.

3. The Brief facts of the case are that the assessee is engaged in the business of land development and Real estate activities and filed the Return of Income for Assessment Year 2014-15 on 26.09.2014 and subsequently the case was selected for scrutiny and Notice under Section 143(2) and 142(1) were issued. In compliance, the learned Authorized Representative appeared from time to time and furnished the details. The Assessing Officer in the course of assessment proceedings, found that the assessee has issued shares at a premium during the relevant previous year and details were furnished. On perusal of the details filed by the assessee, the Assessing Officer noticed that the assessee has issued 75,000 equity shares of face value of Rs.10 each on 9.10.2013 to M/s. Ferromin Sales Pvt. Ltd. at a value of Rs.700 per share which include premium of Rs.690. Hence the AO called for valuation report in respect of shares issued at a premium in accordance with Rule 11 U / 11 U A Since the assessee could not submit the valuation report. The Assessing Officer made addition applying the net value method as per Rule 11 UA (2)(a) of Rs.1,47,75,000 and Assessed total income of Rs.1,52,65,185 and passed the order under Section 143(3) of the Act

Dt.8.12.2016.Subsequently, the Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act and issued Notice. Whereas the assessee has submitted a letter on 17.1.2017 mentioning that the assessment order passed under Section 143(3) of the Act dt.8.12.2016 was accepted by the assessee with addition of Rs.1,47,75,000 as income and the assessee has also paid the taxes of Rs.64,00,260 and prayed for waiver of penalty. Whereas the Assessing Officer observed that the assessee has not responded and failed to give satisfactory explanations in the assessment proceedings and also in penalty proceedings. Therefore Assessing Officer has considered it as fit case for levy of penalty and pass the order 271(1)(c) of the Act Dt.30.06.2017. Aggrieved by the order, the assessee has filed an appeal with the CIT(Appeals), whereas the CIT(Appeals) has confirmed the levy of penalty and dismissed the appeal. Aggrieved by the CIT (Appeal) order, the assessee has filed an appeal with the Tribunal.

4. The learned Authorized Representative at the time of hearing submitted that the penalty was levied by the Assessing Officer under the provisions of Section 271(1)(c) of the Act for concealment and inaccurate particulars furnished and further no reasonable opportunity of hearing was provided to the assessee before initiating the penalty and only one hearing was granted. Further the CIT(Appeals) has not granted sufficient time to the assessee to substantiate the case with evidence and prayed for an opportunity of hearing. Contra, the learned Departmental Representative supported the orders of CIT(Appeals).

5. We heard the rival contentions and perused the material on record. The sole matrix of the disputed issue as envisaged by the learned Authorized Representative that the assessee was not provided sufficient opportunity of hearing before the Assessing Officer in the penalty proceedings. The contention of the learned Authorized Representative that the assessee has only submitted explanation with respect to acceptance of addition made by the Assessing Officer in the assessment proceedings under Section 143(3) of the Act dt.8.12.2016. On perusal of the penalty order, we found that the assessee in lieu of the show cause notice issued has filed explanations on 17.01.2017 and mentioned that the addition in order under Section 143(3) of the Act by the Assessing Officer was accepted and paid the taxes. Further, we found that there is no other date of hearing is provided, the assessee has accepted the addition to buy peace with the Department. The Assessing Officer in complying the provisions of Section 271(1(c) of the Act has come to a conclusion that the assessee has deliberately furnished inaccurate information and details. The learned Authorized Representative emphasized that the assessee has prima facie vital explanations to submit before the Assessing Officer in the penalty proceedings and prayed for one more opportunity. Therefore we considering the factual aspects and principles of natural justice and further the reasons envisaged by the learned Authorized Representative, consider it appropriate to provide one more opportunity to the assessee to give clarifications

and explanations in detail to the Assessing Officer in the penalty proceedings. Accordingly we restore the disputed issue to the file of the Assessing Officer with the direction to re examine the issue afresh on merits and pass a speaking order. Further the assessee should be provided adequate opportunity of being heard and allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the assessee appeal is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 19.02.2020.

*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