

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE
BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.2288/Bang/2019
Assessment Year : 2014 - 15

The Dy. Commissioner of Income Tax, Circle-3(1)(2), Bengaluru.	Vs.	M/s G Corp Pvt. Ltd., No.21/19, Craig Park Layout, Off M.G Road, Bengalure-560 001. PAN - AABCG 4084A
APPELLANT		RESPONDENT

In CO No.3/Bang/2020
Assessment Year : 2014 - 15

M/s G Corp Pvt. Ltd., No.21/19, Craig Park Layout, Off M.G Road, Bengalure-560 001.	Vs.	The Dy. Commissioner of Income Tax, Circle-3(1)(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Manjeet Singh, Addl. CIT
Respondent by	:	Shri Yogesh Kumar, C.A

Date of Hearing	:	25-06-2020
Date of Pronouncement	:	03-07-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by revenue against order dated 16/08/2019 passed by Ld.CIT(A)-3, for assessment year 2014-15. Assessee has filed cross objection which is in support of the order passed by Ld.CIT(A) on following grounds of appeal:

1. *The Cross Objector submits that the Assessing Officer failed to appreciate that the Appellants claim for business expenses was purely a legal claim, and no penalty should lie even if the claim is found unsustainable in law.*
2. *The Assessing Officer erred in law in disregarding the decision of the Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. (322 ITR 158).*
3. *Having regard to the facts and circumstances of the case, the Assessing Officer has erred in levying penalty under section 271(1)(c) of Rs.98,71,468/- in respect of a bonafide claim of expenses.*
4. *The Assessing Officer erred in levying penalty for concealment of particulars of income/ furnishing inaccurate particulars of income in a case where two views were possible.*
5. *The Assessing Officer erred in levying penalty u/s.271(1)(c) of Rs.98,71,468/- as the Cross Objector had neither concealed particulars of income nor furnished inaccurate particulars of income.*
6. *Without prejudice to Cross Objections Nos 1 to 5, the Cross Objector submits that the penalty levied is highly excessive and arbitrary, and needs to be reduced substantially.*

Brief facts of the case are as under:

2. Assessee is engaged in the business of real estate development has project management, development of retails residential and commercial projects and letting the properties morals on hire for rentals etc. Assessment order was passed under section 143 (3) of the act dated 06/12/2016 wherein following disallowances were made:

Employee benefit expenses Rs.2,68,84,765/-

Travelling and conveyance expenses Rs. 26,37,207/-

Legal and professional expenses Rs. 9,03,270/-

Disallowance under section 14A read with Rule 8D, amounting to Rs.79,29,427/- was also made under Rule8D(2)(ii) and sum of Rs.64,52,787/- under Rule 8D(2)(iii) was also made.

Ld.AO initiated penalty proceedings under section 271(1)(c) of the Act in assessment order.

3. Subsequently, notice under section 274, read with section 271 was issued to assessee dated 06/12/2000, without specifically stating, whether penalty is initiated for concealment of income, or furnishing of inaccurate particulars. It has been submitted by assessee that, neither assessment order nor notice under section 274 specifies the limb for which penalty has been initiated.

4. Subsequently, Ld.CIT(A)-3 passed order dated 20/02/2018 in appeal filed by assessee challenging additions made by Ld.AO in order passed under section 143(3) of the Act, business expenses disallowed amounting to Rs.3,04,25,242/- was confirmed, interest expenditure added under section 14A read with Rule 8D(2)(ii) of Rules was deleted and disallowance under section 14A read with Rule 8D(2)(iii) of the Act was partly allowed.

Ld.AO in penalty proceedings levied penalty amounting to Rs.98,71,468/- under section 271(1)(c) of the Act, on disallowances of business expenses for concealing particulars of income by way of filing inaccurate particulars of income.

5. Aggrieved by penalty levied, assessee preferred appeal before the Ld. CIT (A). Ld.CIT(A) relying upon decision of (*Hon'ble Karnataka High Court*) in case of (*Manjunatha Cotton and Ginning Factory*) reported in (*359 ITR 555*) and (*CIT Vs. SSA'S Emerald Meadows*) reported in (*2016*) *73 Taxmann.com 241*), deleted penalty. Ld. CIT (A) noted that, notice is defective, as it did not indicate, whether penalty is initiated on account of concealment of income or furnishing of inner rate particulars. Ld. CIT(A) also noted that, the same is not discernible from assessment order passed under section 143 (3) of the Act.

6. Aggrieved by order of Ld. CIT(A), revenue is in appeal before us now.

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

8. 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 concealment of income or filing of inaccurate particulars. Penalty was initiated on both limbs. Impugned notice initiating penalty proceedings under section 274 read with 271 is also on both limbs, as there is no strike off of irrelevant limbs. Ld. AO while discussing independent additions in assessment order, did not specify any of the limbs for which penalty is initiated.

9. However, order passed by Ld.AO under section 271(1)(c) is for concealment of income by filing inaccurate particulars of income. In assessment order, we note that, Ld.AO did not initiate

penalty under any particular limb, vis-a-vis disallowances made. 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.

10. 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.

11. Cross objection filed by assessee is in support of the order passed by Ld.CIT(A). As we have dismissed the appeal filed by revenue cross objection becomes infructuous.

In the result appeal filed by revenue stands dismissed and cross objection filed by assessee stands dismissed as infructuous.

Order pronounced in the open court on 3rd July, 2020

Sd/-
(B. R. BASKARAN)
Accountant Member
Bangalore,
Dated, the 3rd July, 2020.

Sd/-
(BEENA PILLAI)
Judicial Member

/Vms/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-06-2020		Sr.PS
3.	Draft proposed & placed before the second member	-06-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-06-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-07-2020		Sr.PS/PS
6.	Kept for pronouncement on	-07-2020		Sr.PS
7.	Date of uploading the order on Website	-07-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-07-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS