

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No. 2123/Bang/2018
Assessment year: 2014-15

Shri Ravikiran Netla, A-302, Manthri Greens, No.1, Sampige Road, Bengaluru - 560003 PAN: AEDPR 1751C	Vs.	The Income Tax Officer, Ward-5(3)(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri. A. Ravish Rao, CA
Respondent by	:	Smt. R.Premi, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	09.09.2020
Date of Pronouncement	:	10.09.2020

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order dated 03.05.2018 of the CIT(Appeals)-6, Bengaluru relating to assessment year 2014-15. The assessee has raised various grounds with regard to penalty levied u/s. 271(1)(c) of the Income-tax Act, 1961 [the Act].

2. The brief facts of the case are that the assessee filed return of income after declaring total income of Rs.27,79,800 with TDS claim of Rs.6,83,858. Later the assessee filed revised return declaring total income of Rs.16,62,000 and refund claim of Rs.3,45,400. It was found that assessee's claim of housing loan interest and other deductions under Chapter VIA were not supported by proper evidence. Accordingly, these

claims under Chapter VIA were disallowed by the AO. Consequently, penalty u/s. 271(1)(c) of the Act was levied at Rs.3,45,400.

3. Before the CIT(Appeals), the assessee challenged the levy of penalty u/s. 271(1)(c) on the ground that penalty notice u/s. 274 of the Act was bad in law. However, the CIT(Appeals) held that issue of notice u/s. 274 is valid and consequent framing of penalty order is also valid. Even on merits, levy of penalty was confirmed by the CIT(Appeals).

4. Before us, the Id. AR for the assessee submitted that the case was mishandled by one Mr. Nagesh Shastry, Income Tax Practitioner, who has been indulging in claim of fraudulent refunds by fictitious claim of deductions, which was unearthed by the Investigation Wing of the Income Tax Department. It was submitted that without the knowledge of assessee, Mr. Nagesh Shastry has filed revised return and all requisite password, etc. was kept with him and by giving the mobile number of Mr. Nagesh Shastry only. It was submitted that the Mobile no. & email address given to the department in original return and revised return were different, which can be looked into so as to see the veracity of the assessee's statement. Further it was submitted that the entire refund issued is recovered back by the income-tax authorities by way of attaching bank account of assessee. According to the Id. AR, there was no fault of assessee in filing the revised return so as to claim the fraudulent refund. The entire issue of claim of fraudulent refund is by Mr. Nagesh Shastry only and the assessee was bonafide in his action and there was no fault from the assessee's side.

5. The Id. DR submitted that the entire claim of fraudulent refund was with full knowledge of assessee and the assessee at this stage cannot say that it was handiwork of Mr. Nagesh Shastry.

6. We have heard both the parties and perused the material on record. In the quantum appeal order dated 19.2.2018, the CIT(Appeals) recorded these facts in para 5 of his order that Mr. Nagesh Shastry was instrumental in filing the revised return. However, the same facts and arguments in the penalty proceedings are not considered by the CIT(Appeals). In our opinion, it is proper to examine whether Mr. Nagesh Shastry is instrumental in claiming fraudulent refund on behalf of assessee by indulging in malpractices. If Mr. Nagesh Shastry is found solely responsible for such fraudulent act and that assessee's act is bonafide, penalty cannot be levied. With these observations, we remand this issue to the file of the CIT(Appeals) to consider all these facts and decide the issue afresh in accordance with law, after affording assessee opportunity of being heard.

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

Pronounced in the open court on this 10th day of September, 2020.

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 10th September, 2020.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.