

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'B' BENCH : Hyderabad**

(Through Video Conferencing)

**Before Smt. P. Madhavi Devi, Judicial Member
And
Shri A. Mohan Alankamony, Accountant Member**

**ITA No. 1355/Hyd./2018
Block Period from 01.04.1989 to 27.07.1999**

Ms. Namrata N Shirodkar
No. 398 A, Road No. 81
Jubilee Hills
Hyderabad 500 033

vs. ACIT, Circle 2(2)
Hyderabad

PAN: AACPS4454J

(Appellant)

(Respondent)

For Assessee: Ms. K. Hemalatha, C.A.
For Revenue: Sh. Rajat Mitra, D.R.

Date of Hearing : 17/09/2020
Date of Pronouncement 30/09/2020

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal against the order of Ld.CIT(A)-3, Visakhapatnam dated 03.05.2018 confirming the penalty levied by the AO u/s 158 BFA(2) of the I.T. Act, 1961 for the block period from 01.04.1989 to 27.07.1999.

This appeal has been taken up for hearing through video conferencing on 17.09.2020 and both the parties were heard.

2. Brief facts of the case are that the assessee is a film artist and is regularly assessed to tax. There was a search and seizure operation u/s 132

of the I.T. Act, 1961 in the case of M/s Tips Films Pvt. Ltd. and its director Mr. Kumar S. Taurani. During the course of search, certain loose sheets of paper were found and seized, and it was explained by Mr. Taurani that they contain the details of cash payment made to some persons including the assessee for making of the film 'Kacche Dhage'. In view of the same, the AO initiated assessment proceedings u/s 158 BD of the I.T. Act 1961 in the case of the Assessee and AO has made an addition of Rs.5,00,000/- which is the alleged cash payment received by assessee from Mr. Taurani. The assessee carried the matter in appeal before the CIT(A) who confirmed the addition and thereafter, the appeal was filed before the Tribunal which was dismissed for non-appearance of the assessee. However, the assessee did not seek recall of the order of the Tribunal, therefore, the said order has become final. In the meantime, the AO has initiated penalty proceedings u/s 158 BFA(2) of the I.T. Act, 1961 on the ground that but for the search, this income would not have been brought to tax in the hands of the assessee. Accordingly, AO levied penalty of Rs.3,30,000/- which is equal to 100% of tax sought to be evaded by assessee. Aggrieved, assessee preferred an appeal before the CIT(A), who confirmed the order of AO.

2.1. Assessee is in second appeal before us by raising the following grounds of appeal.

- 1) *"1. For that the order of the Ld.CIT(A) is contrary to law, facts and circumstances of the case.*
- 2) *2. For that the Ld.CIT(A) erred in confirming the penalty of Rs.3,30,000/- levied by AO u/s 158 BFA of the Act without considering the submissions made in this regard.*

For these grounds and such other grounds that may be adduced before or during the hearing of appeal, it is prayed that the Hon'ble Tribunal may be pleased to delete the penalty levied or pass such other orders as the Hon'ble Tribunal may deem fit."

3. Ld. Counsel for the assessee submitted that the search was conducted in the case of Mr. Taurani and there was no material relating to

assessee which was found in the search except the paper mentioned by the AO. She submitted that there was no other evidence which was found by the AO to make the addition and further that the addition has become final only due to the non-appearance of the assessee before the ITAT and not on merits. She further submitted that the provisions of S.158 BFA were applicable for assessment u/s 158 BC and not for assessment u/s 158 BD of the Act and therefore she prayed that penalty levied be deleted.

4. Ld.DR, however, supported the orders of the authorities below and reiterated that CIT(A) has given a clear finding that the seized paper contained payment made to assessee in cash as well as cheque and the cheque payment has been disclosed by assessee and, therefore, cash payment also should be considered as a genuine payment and since the assessee has failed to disclose the said income, penalty levied u/s 158 BFA(2) of the I.T.Act, 1961 is to be confirmed.

5. Having regard to rival contentions and material placed on record, we find that the assessment in the case of the assessee was made u/s 158 BD of the Act. As regards the arguments of the Ld.Counsel for the Assessee that the provisions of S.158 BFA are applicable only to assessments completed u/s 158 BC of the Act and not u/s 158 BD of the Act, we are unable to agree with this contention, because, the assessment initiated u/s 158 BD is completed by the AO u/s 158 BC of the Act. For the sake of clarity and ready reference, the provision of Sec.158 BD is reproduced hereunder:-

“158BD. Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed under section 158BC against such other person and the provisions of this Chapter shall apply accordingly.”

Thus, this argument of the assessee fails. However, we find that the alleged paper found during the course of search was not from the possession of the

assessee but was from the possession of Mr. Kumar S.Taurani and such paper did not contain any signature of the assessee. It may be sufficient to make the addition in the hands of the assessee, but it is also settled law that every addition does not attract penalty automatically. The penalty proceedings, are independent and the assessee may explain and argue against the addition made and may also take up a new plea which he has not taken during the assessment proceedings as held by the Hon'ble Allahabad High Court in the case of Jaidayal Pyarelal vs. CIT (1973) Tax LR 880 (All.). In the case before us, the assessee had taken a ground before the CIT(A) that there is neither proof of payment nor mention in the contract dated 15.3.1997 about the said payment. But, the CIT(A) has not considered the said aspect at all. He confirmed the penalty mainly on the ground that the addition has been confirmed by the CIT(A) and also Tribunal. But, as pointed out in the earlier paras, the Tribunal has not decided the appeal on merits.

In para 4.2 of his order, the CIT(A) has recorded the contentions of the assessee as well as the admission of Mr.Taurani that there is no proof in his possession of having paid Rs.5,00,000/- in cash to the assessee. This contention of the assessee has not been rebutted by the CIT(A). Therefore, there is no positive finding of the authorities below with substantial evidence to hold that the assessee has concealed her income. It was on the basis of circumstantial evidence that the addition was made and the penalty was confirmed.

5.1. Therefore, we delete the penalty levied by the AO u/s 271(1)(c) of the Act.

6. In the result, assessee's appeal is allowed.

Order pronounced on 30th September, 2020.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Dated: September, 2020.

*gmv

Copy forwarded to:

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2. ACIT, Circle 2(2), Hyderabad./CIT(A)-3, Visakhapatnam.
3. Pr.CIT-(Central), Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard File.