

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

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.1780/Bang/2019 : Asst.Year 2015-2016

Sri.Manjunath Kariappa No.1387, 12 th B Cross, 2 nd Stage West of Chord Road Mahalakshampuram Bangalore – 560 086. PAN : BEEPK1236D.	Vs.	The Income Tax Officer Ward 6(2)(2) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.K.Mallaha Rao, Advocate
Respondent by :Sri.Priyadarshi Mishra, JCIT-DR

Date of Hearing : 13.10.2020	Date of Pronouncement : 13.10.2020
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 24.06.2019. The relevant Assessment Year is 2015-2016.

2. The solitary issue that is raised is whether the CIT(A) is justified in confirming penalty imposed u/s 271(1)(c) of the I.T.Act amounting to Rs.8,25,748. The assessee has also filed additional grounds. The additional grounds pertain to the issue that notice dated 17.06.2009 issued u/s 274 r.w.s. 271(1)(c) of the I.T.Act is defect and vague, hence it was stated that the order imposing penalty u/s 271(1)(c) of the I.T.Act is to be quashed.

3. Briefly stated the facts of the case are as follows:

The assessee is an individual. For the assessment year 2015-2016, the return of income was filed on 29.12.2016 declaring total income of Rs.13,68,954. During the course of assessment proceedings, the A.O. inquired into the source of investments of Rs.2.61 crore by the assessee in purchase of an immovable property. The assessee submitted that a sum of Rs.26,72,328 was loan availed from others, but did not furnish the name, address, PAN of the said persons. In the assessment concluded, the A.O. made addition u/s 68 of the I.T.Act for a sum of Rs.26,72,328. Subsequently, penalty was imposed u/s 271(1)(c) on the addition of Rs.26,72,328 (penalty amounting to Rs.8,25,748).

4. Aggrieved by the order imposing penalty of Rs.8,25,748, the assessee preferred appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The CIT(A) held that even in the present penalty proceedings the assessee has not been able to furnish the details of the persons from whom he had availed loan. Hence, it was concluded by the CIT(A) that the penalty has been rightly levied in the facts and circumstances of the case.

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. In support of the additional ground, the assessee has submitted assessment order, copy of the notice dated 17.06.2019 issued u/s 274 r.w.s. 271(1)(c) of the I.T.Act. The assessee has also filed a petition under Rule 29 of the ITAT Rules, 1963 for admission of additional evidence. The additional evidence sought to be admitted are confirmation

letter from the parties from whom the assessee had taken loan amounting to Rs.26,72,328. On a query from the Bench, the learned AR admitted that quantum assessment was accepted by the assessee to buy peace with the Department.

6. The learned Departmental Representative supported the orders of the Assessing Officer and the CIT(A).

7. We have heard the rival submissions and perused the material on record. The additional ground raises the issue that the penalty notice issued is defect and vague. Hence, the penalty order u/s 271(1)(c) of the I.T.Act is to be quashed. In this context, the assessee had relied on the judgment of the Hon'ble Karnataka High Court in the case of *CIT v. Manjunath Cotton and Ginning Factory* reported in 218 taxman 423. The notice u/s 274 r.w.s. 271(1)(c) of the I.T.Act (notice dated 17.06.2019) has been issued for concealing particulars of income. We have perused the penalty order dated 29.06.2018. The penalty has been imposed u/s 271(1)(c) of the I.T.Act for concealing the particulars of income. Hence, it cannot be stated that the notice issued u/s 274 r.w.s. 271(1)(c) of the I.T.Act is defect and vague. Hence, the additional ground raised by the assessee is rejected.

8. The assessee has filed application under Rule 29 of the ITAT Rules, 1963. The additional evidence now sought to be admitted are confirmation letters received from persons from whom the assessee had taken loan. It is stated that the additional evidence now filed goes to root of the issue and in

the interests of justice and equity, the additional evidence needs to be admitted. The assessment and penalty proceedings are separate. The additions made in the quantum assessment can be explained in a penalty proceeding and assessee can contend that penalty is not leviable in the facts and circumstances of the case by leading in any fresh evidence to such an effect. The additional evidences are confirmation letters from the creditors of the assessee and goes to the root of the issue raised in this appeal. In the interests of justice and substantial cause, we are of the view that the additional evidence needs to be admitted and taken on record. Since the additional evidence is admitted, the matter needs to be examined by the A.O. afresh. The A.O. shall call for the details of the confirmation letters filed by the assessee before the Tribunal and take a decision in accordance with law. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this day of 13th October, 2020.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 13th October, 2020.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Bangalore