

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.Nos.389 to 394/Chny/2020

(निर्धारणवर्ष / Assessment Years: (2011-12 to 2016-17))

Mr. V.Natarajan 64C, Rotary Nagar, Rasipuram-637 408.	Vs	The Assistant Commissioner of Income Tax, Central Circle,Salem.
PAN: ACGPN 1477Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. T.S.Lakshmi Venkataraman, C.A
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. S.Palani Kumar,CIT

सुनवाईकीतारीख/Date of hearing	:	09.11.2021
घोषणाकीतारीख /Date of Pronouncement	:	09. 11.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

These six appeals filed by the assessee are directed against separate, but identical orders of the learned CIT(A)-19, Chennai, all dated 30.10.2019 and pertain to assessment years 2011-12 to 2016-17. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for all assessment years, therefore, for the sake of brevity, grounds of appeal filed for the assessment year 2011-12 are reproduced as under:-

“1. The learned CIT(A) is not justified in sustaining the penalty to an extent of Rs.10,000/- levied by the AO u/s 272A of the IT Act.

2. The adjournment letter dated 29.10.2019 filed by the appellants authorized representative was not considered by the CIT(A) and in fairness he should have adjourned the hearing and should have given an opportunity for personal representation.

3. Even otherwise the CIT(A) should have passed the appellate order on merits. The CIT(A) has not adjudicated upon all the grounds raised before him. In the grounds of appeal a specific point was raised as to the perusal of order sheet entries in the assessment records and also non-issue of show cause notice before finalization of penalty proceedings. The grounds in respect of the above issues has not been adjudicated by CIT(A).

4. In view of the above grounds and other submissions to be made at the time of appeal hearing, the penalty of Rs. 10,000/- sustained by CIT(A) may be cancelled and justice rendered.”

3. The assessee has also filed a petition for admission of additional grounds and has taken additional grounds on validity of penalty levied u/s. 272A of the Income Tax Act, 1961 for assessment years 2011-12 to 2016-17 and relevant additional grounds of appeal filed by the assessee are reproduced as under:-

“1. The AO is not justified in levying the penalty of Rs.10,000/- u/s 272A of the Act for the Assessment year 2011-12 since the enabling provision under clause (d) to sub-section (1) of section 272A for levy of penalty for failure to comply with a notice under sub section (1) of section 142 or sub-section (2) of section 143 came in to

effect from 01.04.2017 which was introduced by Finance Act, 2016.

2. The AO is not justified in levying the penalty without issuing a show cause notice as provided in sub-section (4) to section 272A of the Act.”

4. The learned A.R for the assessee at the time of hearing, submitted that although the assessee has taken a ground challenging penalty levied by the Assessing Officer u/s.272A of the Act, but in absence of specific ground challenging validity of penalty order passed by the Assessing Officer, a petition has been filed raising additional grounds challenging validity of penalty proceedings. He further submitted that additional grounds taken by the assessee challenging validity of penalty levied by the Assessing Officer u/s.272A is purely legal issue and this can be taken any time including appellate proceedings before the Tribunal. Therefore, additional grounds filed by the assessee may be admitted in the interest of justice.

5. The learned DR, on the other hand, although opposed additional grounds filed by the assessee, but, because additional grounds taken by the assessee is purely legal issue,

has fairly agreed that additional grounds filed by the assessee may be admitted.

6. Having heard both sides and considered material on record, we are of the considered view that additional grounds raised by the assessee by way of petition for admission of additional grounds is purely legal issue, which can be raised at any stage of proceedings, including appellate proceedings before the Tribunal and thus, additional grounds filed by the assessee for all assessment years are admitted.

7. Brief facts of the case are that there was search and seizure operation u/s.132 of the I.T. Act, 1961 conducted in the residential premises of Shri V.Natarajan on 27.12.2016. Consequent to search, proceedings u/s.153A of Income Tax Act, 1961, for assessment years 2011-12 to 2016-17 had been initiated. The Assessing Officer has issued notice u/s.142(1) of the Income Tax Act, 1961, on 10.08.2018 to call for various information and details. The assessee has failed to comply with notice issued u/s.142(1) of the Act and hence, the Assessing Officer has levied penalty u/s.272A of the Act amounting to

Rs.10,000/- for failure to comply with statutory notice issued u/s.142(1) of the Income Tax Act, 1961. The assessee carried matter in appeal before first appellate authority, but could not succeed. The learned CIT(A) for reasons stated in his appellate order rejected arguments taken by the assessee and confirmed penalty levied by the Assessing Officer u/s.272A of the Act for not complying with notice issued u/s.142(1) of the Act. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

8. The learned A.R for the assessee submitted that the learned CIT(A) has erred in sustaining penalty levied by the Assessing Officer u/s.272A of the Income Tax Act, 1961 for assessment years 2011-12 to 2016-17 without appreciating fact that clause (d) to sub-section (1) of section 272A, which has been inserted w.e.f 01.04.2017 by the Finance Act, 2016 is applicable from assessment year 2017-18 onwards and thus, in absence of enabling provision, no penalty can be levied u/s.272A of the Act for failure to comply with notice under sub-section (1) of section 142 or sub-section (2) of section 143 of the Income Tax Act, 1961, for earlier assessment year.

9. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that there is no error in reasons given by the learned CIT(A) to sustain penalty levied by the Assessing Officer u/s.272A of the Act, because the assessee does not comply with statutory notice issued u/s.142(1) of the Income Tax Act, 1961.

10. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, clause (d) to sub-section (1) of section 272A has been inserted by the Finance Act, 2016 w.e.f 01.04.2017, as per which the Assessing Officer can levy penalty u/s.272A for failure to comply with notice issued u/s.142(1) or section 143(2) of the Income Tax Act, 1961. A memorandum explaining Finance Bill vide clause 103 and 111 has clarified purpose and intent of inserting clause (d) to provisions of section 272A of the Act, as per which existing provision of sub-section (1) provides for levy of penalty of Rs.10,000/- for each failure or default or to answer questions raised by income-tax authorities under the Income Tax Act, refusal to sign any statement legally required during proceedings under the Income

Tax Act or failure to attend or give evidence or produce books or documents as required under sub-section (1) of section 131 of the Act. It further states that it has proposed to amend sub-section 272A to further include levy of penalty of Rs.10,000/- for each default or failure to comply with notice issued sub-section (1) of section 142 or sub-section (2) of section 143 or failure to comply with direction issued under sub-section (2A) of section 142 of the Act. As per the Memorandum explaining Finance Bill, it is very specifically stated that these amendments will take effect from 01.04.2017 and will accordingly apply in relation to assessment year 2017-18 and subsequent years. From the above, it is very clear that newly inserted clause (d) to sub-section (1) of section 272A is prospective in nature and does not operate retrospectively for earlier assessment years. Therefore, we are of the considered view that as per well established principles of interpretation of statute, unless it is expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Since, newly inserted clause (d) to sub-section (1) of section 272A is effective from assessment year

2017-18, the Assessing Officer cannot levy penalty u/s.272A of the Act, for failure to comply with notice issued u/s.142(1) of the Act for prior to assessment year 2017-18. Therefore, we are of the considered view that penalty levied u/s.272A of the Act for assessment years 2011-12 to 2016-17 has no legal validity and accordingly, we delete penalty levied by the Assessing Officer for assessment years 2011-12 to 2016-17.

11. In the result, appeals filed by the assessee for assessment years 2011-12 to 2016-17 are allowed.

Order pronounced in the open court on 9th November, 2021

Sd/-
(धुव्वुरु आर.एल रेड्डी)
(Duvvuru RL Reddy)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 9th November, 2021
DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.