

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI RAVISH SOOD, JM**

**ITA No. 1563//PUN/2018
Assessment Year : 2010-11**

Shri Anandrao Sheshrao Bharose,
32 Rani Laxmibai Road,
Parbhani, Dist. Parbhani . Appellant

PAN NO. AHQPB 3615B

V/s.

The I.T.O. Ward 1(4), AurangabadRespondent

Assessee by : Shri Bhuvanesh Kankani
Department by : Shri S.P. Walimbe

Date of Hearing : 06-01-2022
Date of Pronouncement : 07-01-2022

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order of the learned CIT (Appeal)-1 Aurangabad, dated 27-3-2018, which in turn arises from the order passed by the A.O u/s 271(1)(c) of the Income-tax Act, 1961 (for short "Act"), dated 24-03-2017 for the assessment year 2010-11. The impugned order of the CIT(A) has been assailed on the following grounds of appeal before us :

1. On the facts and circumstances prevailing in the case and as per provisions of the Act, it be held that the penalty initiated and levied u/s 271(1)(c) of the Act are not according to the provisions of sec. 271(1)(c) of the Act and the same may please be deleted. Just and proper relief may be granted to the appellant.

2. The appellant prays to be allowed to add, amend, delete, modify, rectify, raise any ground of appeal at the time of hearing.
3. The appellant prays that the delay in filing appeal may be condoned. “

2. Briefly stated, the assessee had filed its return of income for A.Y. 2010-11 on 31-5-2011, declaring an income of Rs. 2,43,110/- a/w agricultural income at Rs. 1,78,110/-. Assessment was thereafter framed by the A.O vide his order passed u/s 143(3) of the Act, dated 18-03-2013 after making two additions, viz. (i) addition of the sundry creditors: Rs. 5,22,020/-; and (ii) addition of the assessee's agricultural income by treating the same as his 'Income from other sources': Rs. 1,78,110/-; and the income of the assessee was determined at Rs. 9,43,240/-.

3. On appeal, the CIT(A)-1, Aurangabad vide his order dated 1-12-2015 though scaled down the addition of the assessee's agricultural income to an amount of Rs. 70,010/-, however, he upheld the addition of the sundry creditors that was made by the A.O u/s 69-A of the ct.

4. After receipt of the order of the CIT(A), the A.O vide his order passed u/s 271(1)(c) of the Act, dated 24-3-2017 saddled the assessee with a penalty of Rs. 1,67,632/-.

5. On appeal, the CIT(A) upheld the penalty imposed by the A.O u/s 271(1)(c) of the Act and dismissed the appeal of the assessee.

6. Aggrieved, the assessee has assailed the order of the CIT(A) before us. On a perusal of the record, we find that the appeal filed by the assessee before us involves a delay of 12 days. As per the 'Affidavit' filed by the assessee the aforesaid delay in filing of this appeal had

occasioned, for the reason, that the assessee was awaiting the order of the Tribunal qua the quantum appeal in its case for the year under consideration, as well as that for the preceding years, viz. A.Ys. 2005-06 to 2008-09, wherein a common issue was involved. It is stated by the assessee, that he remaining under a bonafide belief that the penalty matter was totally dependent upon the outcome of the quantum appeals of the assessee, wherein the hearing of the same before the Tribunal was finally concluded, viz. (i) A.Ys 2005-06 to A.YU. 2008-09, ITA No. 251 to 254/Pun/2016: 26.07.2018; and A.Y. 2010-11 : ITA No. 255/Pun/2016 : 12-09-2018, therefore, for the said bonafide reasons he was awaiting for the order of the tribunal, which had resulted to the delay of 12 days in filing of the present appeal before us. It is stated by the assessee that remaining under the aforesaid bonafide belief that the penalty matter was totally dependent upon the outcome of the quantum appeal of the assessee before the Tribunal, he had sincerely intended to avoid unnecessary litigation which had resulted to the delay of 12 days in filing of the present appeal. Although, we would not hesitate to observe that the delay in filing of the appeal against a penalty order, for the reason, that the order of the Appellate Authority in the quantum appeal was awaited by the assessee cannot form a justifiable reason for seeking condonation of the delay in filing of the appeal, but considering the bonafides of the assessee a/w the factum of short period of delay of 12 days in filing of the present appeal, and the fact that the Id. D.R had no objection to the condonation of the delay therein involved, we are of the

considered view that in all fairness the aforesaid delay merits to be condoned.

7. We shall now advert to the issue involved in the present appeal before us. At the very outset of the hearing of the appeal, it was submitted by the Id. Authorised Representative (for short AR) for the assessee that the addition of the sundry creditors of Rs. 5,22,020 (supra) that was made by the A.O u/s 69A of the Act, had thereafter been vacated by the Tribunal while disposing off the assessee's quantum appeal, vide its order passed in ITA No. 255/PN/2016, dated 30-11-2018. Qua part sustaining by the CIT(A) of an addition of agricultural income of Rs. 70,110/-, it was submitted by the Id. A.R that the same too had been vacated by the Tribunal vide its aforesaid order. In sum and substance, it was submitted by the Id. A.R that now when the additions as regards which penalty had been imposed by the A.O u/s 271(1)(c) of the Act had finally been vacated by the Tribunal and does not hold the ground any more, therefore, the penalty in question cannot exist on a standalone basis and is liable to be deleted.

8. Per contra, the learned Departmental Representative (for short D.R) admitted the aforesaid facts as were canvassed by the assessee's counsel before us.

9. We have heard the Id. authorised representatives of both the parties, perused the orders of the lower authorities and the material available on record. As observed from the record, we find that it is a matter of fact that the additions that were made by the A.O while framing

the assessment u/s 143(3) of the Act, dated 18-03-2013, to the extent the same were thereafter sustained by the CIT(A), viz. (i). addition of sundry creditors u/s 69-A : Rs. 5,22,020; and (ii). Addition of the assessee's agricultural income by treating the same as his income from other sources : Rs. 70,110/, which had formed the very basis for saddling the assessee with penalty u/s 271(1)(c) of the Act, had been vacated by the Tribunal while disposing off the assessee's quantum appeal vide its order passed in ITA No. 255/PN/2016, dated 30-11-2018. In the backdrop of the aforesaid fact, now when the abovementioned additions which formed the very basis for levy of penalty u/s 271(1)(c) of the Act had been vacated, therefore, the penalty imposed by the A.O u/s 271(1)(c) cannot survive on a standalone basis and has to meet the same fate. We, thus, in the backdrop of our aforesaid observations quash the penalty of Rs. 1,67,632/- imposed by the A.O u/s 271(1)(c) of the Act.

10. **Ground No. 1** is allowed in terms of our aforesaid observations.

11. **Grounds N. 2 and 3** being general in nature are dismissed as not pressed.

12. Resultantly, the appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 07/01/2022.

Sd/-

**(INTURI RAMA RAO)
ACCOUNTANT MEMBER**

sd/-

**(RAVISH SOOD)
JUDICIAL MEMBER**

Pune; Dated : 07th January 2022

Ankam

Copy of the Order forwarded to :

1. The Assessee
2. The Chief C.I.T. Nasik
3. The Pr. CIT-1, Aurangabad
4. The Addl./Joint CIT Jalna Range, Jalna
5. The ITO Ward and TPS Parbhani
6. Guard file.

BY ORDER,

Senior Private Secretary
ITAT, Pune.

Date of dictation	06-01-2022
Date on which the typed draft is placed before the dictating member	07-01-2022
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	10-01-2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	