

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.38/Bang/2019
Assessment Year: 2011-12

Sri Amit Kumar Loya H.No.8-317/1, Marwadi Galli, Kirana Bazar Gulbarga 585101  <b>PAN NO : ABXPL5314Q</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Central Circle Belagavi
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Smt. Prathibha, A.R.
<b>Respondent by</b>	:	Sri M.K. Biju, D.R.

<b>Date of Hearing</b>	:	11.01.2022
<b>Date of Pronouncement</b>	:	11.01.2022

**O R D E R**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the order dated 30-10-2018 passed by Ld CIT(A), Kalaburagi confirming the penalty levied u/s 271(1)(c) of the Income-tax Act, 1961 ['the Act' for short] for assessment year 2011-12. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the penalty.

2. The facts relating to the issue are discussed in brief. The assessee is a Chartered Accountant. He originally filed return of income for AY 2011-12 declaring total income of Rs.4,04,940/-. Subsequent to search operations conducted u/s 132 of the Act in the

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hands of M/s Hyderabad Karnataka Educational Society, the assessee was issued a notice u/s 153C of the Act. Subsequently, the assessing officer completed the assessment on 30-09-2015 u/s 143(3) r.w.s 153C of the Act.

3. During the course of assessment proceedings, the AO noticed that the assessee has made deposits aggregating to Rs.11,97,100/- in a bank account maintained with M/s Ganesh Co-op Bank Ltd and they were not reflected in the books of accounts. When the AO asked for explanations regarding sources for making the above said deposits, the assessee agreed for addition of above said amount. Accordingly, he added the same to the total income. The AO also added a sum of Rs.90,000/- u/s 50C of the Act. The assessee accepted the assessment order.

4. The AO, then, initiated penalty proceedings by issuing notice u/s 271(1)(c) of the Act. Before the AO, the assessee submitted that the above said deposits were made out of funds received from his father and uncle. In support of the same, the assessee furnished affidavits obtained from them. Accordingly, the assessee pleaded that the sources of deposits now stand explained. The assessee also contended that the impugned addition is an agreed addition. Accordingly, it was pleaded that the penalty proceedings should be dropped. The AO was not convinced with the contentions of the assessee. He held that the assessee has agreed for the addition only after its detection by him. With regard to the affidavits filed from relatives, the AO held that it is an afterthought. Accordingly, he levied penalty of Rs.3,39,656/- u/s 271(1)(c) of the Act on the above said addition of bank deposits of Rs.11,97,100/-. The Ld CIT(A) also confirmed the same.

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5. The Ld A.R submitted that the assessee had agreed for the addition of bank deposits before the AO only to avoid protracted litigation and to buy peace from the department. Accordingly, when the penalty proceedings were initiated, the assessee explained the sources and also furnished affidavits obtained from the relatives, who have actually given money to the assessee. However, said explanations were rejected by the assessing officer without examining them by observing that it is an afterthought. The Ld A.R submitted that the assessee has offered explanations and also furnished all the facts and material relating to the bank deposits before the AO during the course of penalty proceedings. Accordingly, she contended that the AO was not justified in levying penalty u/s 271(1)(c) of the Act. The Ld A.R relied upon the decision rendered by Hon'ble Karnataka High Court in the case of CIT vs. M M Gujamgadi (2007)(290 ITR 168), wherein the deletion of penalty by Tribunal was upheld by observing that the assessee has agreed for addition of cash credits, since he could not secure attendance of the creditors and hence the explanation so given cannot be said to be not bonafide.

6. On the contrary, the Ld D.R supported the order passed by Ld CIT(A). He submitted that the agreed addition will not absolve the assessee from offering explanations in penalty proceedings as held by Hon'ble Delhi High Court in the case of CIT vs. MAK Data Ltd (2013)(31 taxmann.com 35)(Delhi). He submitted that this decision of Delhi High Court has since been upheld by Hon'ble Supreme Court. He also relied upon the decision rendered by Hon'ble Karnataka High Court in the case of CIT vs. Sangameshwara Associates (2012)(20 taxmann.com 379)(Kar), wherein it was held that action of the assessee in disclosing higher income in the return filed in response to the notice issued u/s 148 of the Act will not debar initiation of penalty proceedings in the reassessment proceedings.

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7. We heard the parties and perused the record. We notice that the assessee has agreed for the addition of amounts deposited in his bank account during the course of assessment proceedings. However, during the course of penalty proceedings, the assessee has explained the sources of deposits and also furnished copies of affidavits given by the relatives who had given money to the assessee. We notice that the AO did not examine them and rejected them stating the same to be an afterthought. However, the fact remains that the assessee has offered an explanation before the AO in penalty proceedings, i.e., he has explained the sources of deposits. Though the AO has refused to examine the said explanations, yet the fact remains that the assessee has furnished all materials available with him before the AO in order to substantiate the explanations. Further, it is a fact that the said explanations have not been proved to be false. At this stage, it is pertinent to refer to Explanation 1 to sec. 271(1)(c) of the Act, which reads as under:—

*“Explanation 1.—Where in respect of any facts material to the computation of the total income of any person under this Act,—*

*(A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner to be false, or*

*(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,*

*then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.”*

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A perusal of the above said Explanation would show that, it is introducing a legal fiction with regard to the additions made. However, it is also possible to interpret in reverse manner, i.e., if the assessee offers an explanation which was not found to be false and even if the said explanation is not substantiated, yet he proves it to be a bonafide one and the assessee furnishes all facts and materials relating thereto, then the addition made shall not be deemed to be concealment of income. We derive support for this interpretation from the decision rendered by Hon'ble jurisdictional Karnataka High Court in the case of M M Gujamgadi (supra), wherein the Hon'ble jurisdictional High Court observed as under:-

*“7. Heard the arguments on both sides. Perused the entire reference papers.*

*8. [Section 271](#) of the Act specifies imposition of penalty for failure to furnish returns, comply with the notices, concealment of income, etc. [Section 271\(1\)\(c\)](#) of the Act authorises the assessing authority or the Commissioner of Income-tax (Appeals) to levy penalty in case of concealment of particulars of income or for furnishing inaccurate particulars of income. Explanation 1 appended to [Section 271\(1\)\(c\)](#) of the Act specifies as to when the assessee fails to offer an explanation or the explanation so offered is found to be false or the explanation is not proved and when the explanation is not bona fide to treat the same as deemed concealment of income. Explanation 1(B) to [Section 271\(1\)\(c\)](#) of the Act is relevant for the purpose of this case and the same reads as hereunder:*

*(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him.*

*9. A reading of [Sections 271](#) and [271\(1\)\(c\)](#) and the **Explanation appended thereto manifestly makes it clear that every addition of income by the Income-tax Officer will not automatically attract levy of penalty.** It is clear from Explanation 1(B) to [Section 271\(1\)\(c\)](#) of the Act that while computing the total income of an assessee, **if the assessee fails to prove that such explanation is bona fide then there will be a deemed concealment by the assessee.** In the instant case, in response to the notice issued by the Income-tax Officer for addition of Rs. 2,01,000, the assessee replied that he borrowed the same from different creditors who are all agriculturists. When the assessee was asked to substantiate this claim, the assessee made attempts to secure those creditors to examine before the Income-tax Officer. Despite the*

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*best efforts of the assessee, he could not secure the creditors as witnesses to substantiate his claim before the Income-tax Officer. Having no other alternative, the assessee voluntarily agreed for addition of Rs. 2,01,000 to his income as cash credit. Accordingly, the Income-tax Officer computed the total income of the assessee at Rs. 2,99,500, vide order of assessment dated August 3, 1994, and on that the assessee has paid the taxes. Under these circumstances **it cannot be said that the explanation of the assessee for non-inclusion of an income of Rs. 2,01,000 in his return of income is not bona fide. The explanation offered by the assessee is available on record. Bona fide failure on the part of the assessee in not substantiating his claim is also available on record.** The Income-tax Officer, while passing the order of penalty under [Section 271\(1\)\(c\)](#) of the Act, has not considered the available explanation of the assessee and whether the explanation so offered is bona fide or not.”*

8. In the instant case, we have noticed earlier that the assessee has offered an explanation before the AO with regard to the sources of deposits, even though he has agreed for addition of the same during assessment proceedings. He has also offered explanation in penalty proceedings with regard to the sources of deposits, i.e., it was made out of funds given by his father and uncle. He has substantiated the said explanation by furnishing affidavits obtained from his relatives. Even though the said explanation was not examined by the AO, yet the fact remains that the same was not proved to be false. Since the assessee has offered an explanation and also substantiated the same by filing available materials, we are of the view that the explanation should be considered to be bonafide one. Accordingly, applying the principles laid down by Hon'ble jurisdictional Karnataka High Court in the case of M M Gujamgadi (supra), we are of the view that the impugned penalty is liable to be quashed. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the penalty of Rs.3,39,656/- levied u/s 271(1)(c) of the Act in the hands of the assessee for AY 2011-12.

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

Order pronounced in the open court on 11<sup>th</sup> Jan, 2022

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 11<sup>th</sup> Jan, 2022.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**