

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.308/Bang/2021
Assessment Year :2015-16

Shri. Joison Kundu KulamJohny, No.11, Ephrathah Villa, 2 nd Cross, Sathya Colony, B Narayanapura Dooravani Nagar, Bengaluru-560 016. PAN : AETPJ 6642 N	Vs.	ITO, Ward – 5(3)(6), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Narendra Kumar Jain, CA
Revenue by	:	Shri. Sankar Ganesh K, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	15.03.2022
Date of Pronouncement	:	18.03.2022

ORDER

Per N. V. Vasudevan, Vice President :

This is an appeal by the assessee against order dated 01.04.2021 of National Faceless Appeal Centre (NFAC), Delhi, relating to Assessment Year 2015-16. In this appeal, the assessee has challenged the order of the CIT(A) whereby the CIT(A) confirmed the order of the AO imposing penalty on the assessee under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter called ‘the Act’).

2. The assessee is a salaried employee with M/s SAP Labs India Pvt Ltd (‘the company’). For Assessment Year 2015-16, the assessee filed revised return of income on 08.03.2016 vide acknowledgement No. 974743380080316

declaring a total income of Rs.14,94,830/- which was arrived after claiming loss under the head Income from House Property to the extent of Rs.6,85,235/- and Chapter VI-A deduction to the extent of Rs.2,83,039/. Accordingly, a refund of Rs.2,28,340/- was claimed in the ROI. The return was processed under u/s 143(1) on 13.04.2016 and a refund of Rs.2,35,190/- was issued.

3. On 24.01.2018, a search action u/s 132 of the Act was carried out by the income tax department at the residence of a Tax Consultant by name Mr. Nagesh Sastry. During the course of search, a statement u/s 132(4) of the Act was recorded from the Tax Consultant. Subsequently, a sworn statement u/s 131(1A) of the Act was recorded from the Tax Consultant at the office of Deputy Director of Income Tax(Inv) on 29.01.2018 and 15.02.2018. In those statements, Mr. Nagesh Sastry admitted that he had made bogus claims in many IT returns filed by him and got refunds from the department. The assessee was one such person for whom Mr. Nagesh Sastry had filed RoI and made false claims and refund of tax. The AO placing reliance on the above statement initiated reassessment proceedings u/s 147 of the Act by issuing notice u/s 148 of Act on 30.05.2018.

4. Upon receipt of the notice u/s 148, the assessee approached another Tax Consultant. The assessee realised that Mr. Nagesh Sastry was not a certified CA and ROI filed by the Tax Consultant had some incorrect information. Based on the advice of the new Tax Consultant, the assessee filed a return of income pursuant to notice u/s 148 of the Act on 02.08.2019. In the return, the assessee declared the total income of Rs.22,46,510/- and Chapter VI A deduction to the extent of Rs.1,85,575/-. In the Order of Assessment, the AO accepted the income returned in response to notice u/s 148 of the Act as assessed income and demand of Rs.2,84,580/- was arrived by the AO. The assessee did not appeal against the order to buy peace and paid the demand raised in the notice of demand u/s 156 vide challan dated 27.11.2019.

5. The AO also initiated penalty proceedings u/s 271(1)(c) of the Act by issuing notice u/s 274 r.w.s 271 of the Act on 13.11.2019. In response to the above notice, the assessee vide letter dated 02.12.2019 submitted that in the interest of equity and justice considering the facts and circumstances under which assessee has filed the original return lenient view was requested before the AO along with citations of case laws. However, the AO rejected the submissions of the assessee and passed order u/s 271(1)(c) of the Act on 03.02.2020. In the order, the AO concluded that the assessee has willfully furnished inaccurate particulars. The AO relied on the outcome of search conducted against the Tax Consultant and statement recorded from the Tax consultant at the time of search. Accordingly, the AO has passed the order levying penalty of Rs. 2,32,500/-. The CIT(A) confirmed the order of the AO against which order of CIT(A) the assessee has preferred the present appeal before the Tribunal.

6. Before us, the learned Counsel for the assessee submitted that the case was mishandled by one Mr. Nagesh Shastry, Income Tax Practitioner, who has been indulging in claim of fraudulent refunds by fictitious claim of deductions, which was unearthed by the Investigation Wing of the Income Tax Department. It was submitted that without the knowledge of assessee, Mr. Nagesh Shastry has filed revised return and all requisite password, etc. was kept with him and by giving the mobile number of Mr. Nagesh Shastry only. It was submitted that the Mobile no. & email address given to the department in original return and revised return were different, which can be looked into so as to see the veracity of the assessee's statement. Further it was submitted that the entire refund issued is recovered back by the income-tax authorities by way of attaching bank account of assessee. According to the Id. AR. there was no fault of assessee in filing the revised return so as to claim the fraudulent refund. The entire issue of

claim of fraudulent refund is by Mr. Nagesh Shastry only and the assessee was bonafide in his action and there was no fault from the assessee's side.

7. The learned DR submitted that the entire claim of fraudulent refund was with full knowledge of assessee and the assessee at this stage cannot say that it was handiwork of Mr. Nagesh Shastry.

8. We have heard both the parties and perused the material on record. In the quantum proceedings, the assessee accepted the addition because he was misled by Mr. Nagesh Shastry who was instrumental in filing the revised return of the assessee making false claims. However, the same facts and arguments in the penalty proceedings are not considered. In our opinion, it is proper to examine whether Mr. Nagesh Shastry is instrumental in claiming fraudulent refund on behalf of assessee by indulging in malpractices. If Mr. Nagesh Shastry is found solely responsible for such fraudulent act and that assessee's act is bonafide, penalty cannot be levied. With these observations, we remand this issue to the file of the CIT(Appeals) to consider all these facts and decide the issue afresh in accordance with law, after affording assessee opportunity of being heard.

9. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(B. R. BASKARAN)
Accountant Member

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 18.03.2022.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.