

आयकर अपीलीय अधिकरण
गुवाहाटी 'डीबी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI 'DB' BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री संजय गर्ग, न्यायिक सदस्य
एवं
डॉ. मनीष बोर्ड, लेखा सदस्य
के समक्ष
Before

**SH. SANJAY GARG, JUDICIAL MEMBER
&
DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 175/Gty/2020
Assessment Year: 2015-16**

***Sri Taking Welly.....Appellant
[PAN: AAVPW 6671 L]***

Vs.

ITO, Ward-North Lakhimpur.....Respondent

**I.T.A. No.: 179/Gty/2020
Assessment Year: 2015-16**

***Smt. Kene Welly.....Appellant
[PAN: ALJPK 2595 G]***

Vs.

ITO, Ward-North Lakhimpur.....Respondent

Appearances by:

Sh. Sanjay Modi, FCA, appeared on behalf of the Assessee.

Smt. I. Gyaneshori Devi, JCIT, appeared on behalf of the Revenue.

Date of concluding the hearing : November 9th, 2022

Date of pronouncing the order : January 2nd, 2023

आदेश
ORDER

Per Manish Borad, Accountant Member:

The captioned appeals filed by the assessee pertaining to the Assessment Year (in short "AY") 2015-16 are directed against separate orders passed u/s 271(1)(c) of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals), Guwahati-1, Guwahati [in short Id. "CIT(A)"] dated 24.09.2020.

2. The assessee is in appeal before the Tribunal raising the following grounds:

ITA No. 175/Gty/2020

"1. For that the penalty order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad in law, facts and procedure.

2. For that in absence of any DIN being quoted and/or communicated in respect of the impugned penalty order, the same is bad in law and is liable to be quashed.

3. For that the impugned order having been passed by the Id. CIT(A) on 24.09.2020 during the time of Covid Pandemic by ignoring the submissions and prayer e-filed by the appellant on 19.09.2020, the impugned penalty order lacks bonafide and is bad in law and is liable to be quashed.

4. For that the penalty under section 271(1)(c) of the Act has been imposed by the Id. CIT(A) on an entirely erroneous assumption of facts and without proper application of mind consequently, the impugned order is bad in law, unsustainable.

5. For that the notice dated 13.03.2020 issued under section 274 being unspecific and vague, the impugned order of penalty passed in pursuance thereto is bad in law and ab initio void.

6. For that on the facts and circumstances of the case, in absence of any material brought on record to show that the appellant has

furnished any inaccurate particulars of income in relation to alleged income of Rs. 34,03,098/-, the ld. CIT(A) was not justified in imposing penalty under section 271(1)(c) of the Act in respect of the same in pursuance to the notice dated 13.03.2020.

7. For that on the facts and circumstance of the case, in absence of material to show that the appellant has in respect of Rs. 34,03,098/- has 'concealed particulars of income' as well as 'furnished particulars of income' which were inaccurate, both being apparently contradictory and mutually exclusive, the ld. CIT(A) was not justified in imposing penalty under section 271(1)(c) of the Act in respect of the same in pursuance to the notice dated 13.03.2020.

8. For that on the facts and circumstances of the case, the ld. CIT(A) erred in imposing penalty of Rs. 11,46,037/- under section 271 (1)(c) of the Act.

9. For that the learned CIT(A) erred in holding that tax on enhanced income of Rs. 34,03,098/- in the instant case works out to Rs. 11,46,037/- and therefore, the levy of penalty at Rs. 11,46,037/- under section 271(1)(c) of the Act is bad in law and liable to be deleted.

10. For that on the facts and circumstances of the case, the impugned penalty order being passed in haste and without allowing any proper and reasonable opportunity of being heard, the same is bad in law and liable to be quashed on this ground alone.

11. For that the impugned order passed by the ld. CIT(A) is bad in law, vitiated and is liable to be quashed as the ld. CIT(A) proceeded in the instant case in a biased manner, in excess of his jurisdiction and with a pre-conceived conclusion and the appellant was blatantly denied justice.

12. For that the appellant is a member of scheduled tribe and is residing in the specified tribal area and is earning income from sources situated in the specified tribal area alone and thus, his entire income is exempt from tax in view of the provisions of section 10(26) of the Act and in such circumstances, imposition of penalty under section 271(1)(c) of the Act by the ld. CIT(A) is travesty of justice. The same may kindly be deleted in its entirety.

13. For the impugned order having been passed by the ld. CIT(A) in utter disregard to the principles of natural justice and merely on the basis of imaginations and suppositions, ignoring the various

materials on record and without allowing any proper opportunity of hearing and without allowing any opportunity to show that the case laws relied upon by him are not applicable and/or distinguishable on facts, the impugned order is bad in law and unsustainable.

14. For that your appellant craves leave of your honours to take additional ground or grounds and/or to modify any ground(s) of appeal at or before the time of hearing.”

ITA No. 179/Gty/2020

1. For that the penalty order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad in law, facts and procedure.

2. For that in absence of any DIN being quoted and/or communicated in respect of the impugned penalty order, the same is bad in law and is liable to be quashed.

3. For that the impugned order having been passed by the ld. CIT(A) on 24.09.2020 during the time of Covid Pandemic by ignoring the submissions and prayer e-filed by the appellant on 19.09.2020, the impugned penalty order lacks bonafide and is bad in law and is liable to be quashed.

4. For that the penalty under section 271(1)(c) of the Act has been imposed by the ld. CIT(A) on an entirely erroneous assumption of facts and without proper application of mind consequently, the impugned order is bad in law, unsustainable.

5. For that the notice dated 13.03.2020 issued under section 274 being unspecific and vague, the impugned order of penalty passed in pursuance thereto is bad in law and ab initio void.

6. For that on the facts and circumstances of the case, in absence of any material brought on record to show that the appellant has furnished any inaccurate particulars of income in relation to alleged income of Rs. 96,27,115/-, the ld. CIT(A) was not justified in imposing penalty under section 271(1)(c) of the Act in respect of the same in pursuance to the notice dated 13.03.2020.

7. For that on the facts and circumstance of the case, in absence of material to show that the appellant has in respect of Rs. 96,27,115/- has ‘concealed particulars of income’ as well as ‘furnished particulars of income’ which were inaccurate, both being apparently contradictory and mutually exclusive, the Id. CIT(A) was not justified

in imposing penalty under section 271(1)(c) of the Act in respect of the same in pursuance to the notice dated 13.03.2020.

8. For that on the facts and circumstances of the case, the ld. CIT(A) erred in imposing penalty of Rs. 35,37,508/- under section 271(1)(c) of the Act.

9. For that the learned CIT(A) erred in holding that tax on enhanced income of Rs. 96,27,115/- in the instant case works out to Rs. 35,37,508/- and therefore, the levy of penalty at Rs. 35,37,508/- under section 271(1)(c) of the Act is bad in law and liable to be deleted.

10. For that on the facts and circumstances of the case, the impugned penalty order being passed in haste and without allowing any proper and reasonable opportunity of being heard, the same is bad in law and liable to be quashed on this ground alone.

11. For that the impugned order passed by the ld. CIT(A) is bad in law, vitiated and is liable to be quashed as the ld. CIT(A) proceeded in the instant case in a biased manner, in excess of his jurisdiction and with a pre-conceived conclusion and the appellant was blatantly denied justice.

12. For that the appellant is a member of scheduled tribe and is residing in the specified tribal area and is earning income from sources situated in the specified tribal area alone and thus, her entire income is exempt from tax in view of the provisions of section 10(26) of the Act and in such circumstances, imposition of penalty under section 271(1)(c) of the Act by the ld. CIT(A) is travesty of justice. The same may kindly be deleted in its entirety.

13. For the impugned order having been passed by the ld. CIT(A) in utter disregard to the principles of natural justice and merely on the basis of imaginations and suppositions, ignoring the various materials on record and without allowing any proper opportunity of hearing and without allowing any opportunity to show that the case laws relied upon by him are not applicable and/or distinguishable on facts, the impugned order is bad in law and unsustainable.

14. For that your appellant craves leave of your honours to take additional ground or grounds and/or to modify any ground(s) of appeal at or before the time of hearing.”

3. On perusal of the grounds, we find that the instant appeals are against the levy of penalty u/s 271(1)(c) of the Act. At the outset, Id. Counsel for the assessee stated that in the quantum appeal relating to both the assessees' captioned appeals, this Tribunal vide its order dated 18.03.2021 in ITA No. 146/Gau/2020 & 148/Gau/2020 has deleted the quantum addition allowing the legal ground raised by the assessee and therefore, the levy of penalty will not survive.

4. On the other hand, Id. D/R failed to controvert this fact submitted by Id. Counsel for the assessee.

5. We have heard rival contentions and perused the records placed before us. We find that the instant appeals are against the levy of penalty u/s 271(1)(c) of the Act. We further note that the quantum addition on which the impugned penalty has been levied, already stands deleted by this Tribunal vide its order dated 18.03.2021 in the matter of *Smt. Kene Welly in ITA No. 146/Gau/2020* & *in Shri Taking Welly in ITA No.148/Gau/2020*.

6. Thus, we find force in the contention of the Id. Counsel for the assessee and therefore, under the given facts and circumstances of the case since the additions on which the penalty u/s 271(1)(c) of the Act is levied have itself been deleted, there remains no legs to stand for the penalty levied u/s 271(1)(c) of the Act. Therefore, the impugned penalty is deleted and the grounds

of appeal raised by the assessee challenging the levy of penalty are allowed.

7. In the result, the both the appeals filed by the assesseees in I.T.A. No.: 175/Gty/2020 & I.T.A. No.: 179/Gty/2020 are allowed.

Kolkata, the 2nd January, 2023

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 02.01.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Sri Taking Welly, C-Sector, Itanagar, Papumpare, Arunachal Pradesh-791 111.**
- 2. Smt. Kene Welly, C-Sector, Itanagar, Papumpare, Arunachal Pradesh-791 111.**
- 3. ITO, Ward-North Lakhimpur.**
4. CIT(A), Dibrugarh.
5. CIT-
6. CIT(DR), Guwahati Bench, Guwahati.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata