



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK 'SMC' BENCH, CUTTACK**

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA Nos.208 to 214/CTK/2022
Assessment Years : 2009-10 to 2015-16

Debasis Padhi, State Bank Road, Berhampur	Vs.	ACIT, Central Circle-1, Bhubaneswar.
PAN/GIR No.ADZPP 4325P		
(Appellant)	..	(Respondent)

Assessee by : Shri C.Parida, AR
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 27/04/2023
Date of Pronouncement : 27/04/2023

ORDER

These are appeals filed by the assessee against the separate orders of the Id CIT(A)-2, Bhubaneswar, all dated 20.9.2022 in Appeal Nos.BBSR-2/10046/2020-21, BBSR-2/10048/2020-21, BBSR-2/10050/2020-21, BBSR-2/10052/2020-21, BBSR-2/10054/2020-21, BBSR-2/10056/2020-21 and BBSR-2/10058/2020-21 against the confirmation of penalty levied u/s.271A of the Act of Rs.25,000/- each for the assessment years 2009-10 to 2015-16, respectively

2. Shri C.Parida, AR appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. At the outset, Id AR of the assessee submitted that the penalty order has been passed in violation of the provisions of section 274(2) of the Act in so far as the prior approval of the JCIT has not been obtained before passing the penalty order u/s.271A of the Act.

4. In reply, Id Sr DR has placed before me the copy of the approval granted by the JCIT, Central Circle, Bhubaneswar-1 on 23.6.2017 alongwith application for approval from the Assessing Officer to the JCIT dated 22.6.2017. It was submitted that the approval has been obtained before passing the penalty order u/s.271A of the Act.

5. In reply, Id AR submitted that the approval is an afterthought and there is no mention of the approval in the penalty order.

6. I have considered the rival submissions. The provisions of section 274(2) of the Act requires that if the penalty in excess of Rs.20,000/- is levied by the ACIT/DCIT, then the prior approval is to be obtained from the ACIT. Id Sr DR has placed before me the application for the approval by the JCIT and the approval granted by the JCIT. A government document is considered to be true and to substantiate what it purports to be until and unless there is evidence to show that such government document is specifically unreliable. Id AR has not been able to produce any evidence to

show that the request for approval by the ACIT and the granting of the requisite approval by the JCIT is not what is purported to be as per the documents produced. Simple averments cannot be treated as evidence for dislodging a government document, which is produced. Just because the penalty order does not mention about the approval granted by the JCIT will not make the approval granted to be non est. In these circumstances, the submission of Id AR that there is no approval obtained from the JCIT before passing the penalty order u/s.271A stands rejected.

7. It was further submitted by Id AR that the penalty u/s.271A has been levied on account of alleged non-maintenance of books of account. It was the submission that the provisions of section 271A gets attracted on the failure to keep and maintain such books of account and other documents as required by section 44AA or rules made thereunder. It was the submission that the assessee maintains books of account and has also produced the books of account before the AO and Id CIT(A). It was the submission that the books of account of the assessee have been audited and the audit report has also been produced before the AO. Id AR drew my attention to para 4.2 of the order of the Id CIT(A) in para (b), wherein, he has referred to production of books of account in the course of assessment proceedings and in the remand proceedings and in para (c), wherein, there is mention that the books of account have been produced before the Id CIT(A). It was the submission that the AO and Id CIT(A) without considering the fact that

the books of account have been produced, levied penalty u/s.271A and confirmed same. It was the prayer that in the audit report also, the auditor has specifically mentioned that the books of account have been examined and verified. It was the submission that the assessee is maintaining the books of account as required u/s.44AA and consequently, the penalty as confirmed by the Id CIT(A) is liable to be deleted.

8. In reply, Id Sr DR drew my attention to the order of the Id CIT(A) in para 4.4, wherein, the Id CIT(A) has extracted the gist of the remand report of the Assessing Officer. He submits that the contention that the books of account produced on 30.8.2016 and 23.3.2018 has been denied by the AO and has specifically in the remand report dated 12.9.2022 stated that the claim of producing the specified books of account during the assessment as well as penalty proceedings is without any basis and intended to mislead the appeal proceedings. It was the further submission by Id Sr DR that the remand report was provided to the assessee and the assessee has not responded to the same, which clearly shows that no books of account were actually maintained by the assessee. It was the prayer that the penalty as levied by the AO and as confirmed by the Id CIT(A) u/s.271A is liable to be upheld.

9. I have considered the rival submissions. A perusal of the assessment order in the present case shows that in para 8, the AO has specifically mentioned that the assessee has not complied with the notices and in view

of the non-production of books of account, he had no other alternative except to make the assessment u/s.144 being an exparte assessment. It must be appreciated here that this is a case where there has been a search U/S.132 of the Act and even the Panchanama has not been produced before me to show that any books of accounts were found. A perusal of the penalty notice shows that even in the course of penalty proceedings, the books of account have been produced. A perusal of the order of the Id CIT(A) in the penalty proceedings shows that the AO has specifically taken a stand that the books of account have never been produced before him and when the remand report has been given to the assessee, the assessee has chosen to not to respond to the same. A perusal of section 44AA shows that every person carrying on, in the present assessee's case the medical profession, is to maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act. A perusal of the assessment order shows that the Assessing Officer has disallowed 20% of the specified expenditure as claimed by the assessee and has also added various deposits in the various bank accounts maintained by the assessee. There is no mention of the assessee having produced the books of account or the books of account have been rejected. Thus, clearly, the assessee had multiple opportunities to produce the books of account before the AO; (1) in the course of assessment, (2) in the course appeal before the Id CIT(A) in the quantum

appeals,(3) in the course of penalty proceedings u/s.271A and (4) in the course of appeal proceedings in respect of penalty proceedings before the Id CIT(A). There is no evidence to show that any books of account have been produced by the assessee in the course of any of the proceedings much less no evidence has been produced to show that the books of account have been found in the course of search. Further, the fact that the Assessing Officer has in the course of assessment disallowed the estimated expenditure and has added the deposits in the bank account by invoking the provisions of section 133(6) clearly shows that the assessee has not kept and maintained such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Act. This being so, the penalty as levied by the AO and as confirmed by the Id CIT(A) stands confirmed.

10. In the result, appeals filed by the assessee stand dismissed.

Order dictated and pronounced in the open court on 27/04/2023.

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 27/04/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Debasis Padhi,
State Bank Road, Berhampur
2. The respondent: ACIT, Central Circle-1,
Bhubaneswar.
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack