

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA Nos. 184 to 186/Bang/2023</b>
<b>Assessment Years : 2014-15 to 2016-17</b>

Shri Bolar Jayaraj Shetty, E37/3, 6 <sup>th</sup> Main Road, KHB Colony, 1 <sup>st</sup> Stage, Sasaveshwaranagar, Bengaluru – 560 079. <b>PAN: BIQPS7963D</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 5[3][5], Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Pranav Krishna, Advocate
Revenue by	:	Shri Shahnawaz Ul Rahman, Addl. CIT (DR)

Date of Hearing	:	04-05-2023
Date of Pronouncement	:	08-05-2023

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeals filed by assessee against separate orders passed by NFAC dated 27.02.2023 for A.Ys. 2014-15 to 2016-17.

2. It is submitted by the Ld.AR that assessee had filed return of income for the relevant AYs wherein TDS claim and deduction under chapter VI-A was made. The returns were filed through one Shri Nagesh Shastri, Tax consultant using his email ID. A survey action took place at the premise of Shri Nagesh Shastri

where he admitted that, in the returns filed by him on behalf of his clients, various bogus / false claims were made with an intention to either reduce the tax liability or to claim excess refund. Accordingly a notice u/s. 148 is issued to the assessee. The assessing officer based on various replies filed by assessee completed the assessment by observing certain inaccurate particulars in the return of income so filed. The assessing officer while passing order u/s. 148 r.w.s. 143(3) made certain additions by denying certain excess claims made in the return of income for the years under consideration as they were not supported by evidences. Subsequently a notice u/s. 271(1)(c) was issued to assessee and penalty was levied for filing of inaccurate particulars.

Aggrieved by the penalty orders passed by the Ld.AO for the years under consideration, the assessee filed appeal before the Ld.CIT(A).

The Ld.CIT(A) confirmed the penalty order passed by the Ld.AO.

3. Aggrieved by the penalty orders filed for the assessment years under consideration, assessee is in appeal for all the three years before this *Tribunal*.

4. Before us, the Ld.AR submitted that one Mr. Nagesh Shastri an Income Tax Practitioner was involved in indulging in claim of fraudulent refunds by fictitious claim of deductions that was unearthed by Investigation wing of the Income tax department. It was submitted that, such claims were made without the knowledge of assessee by Mr. Nagesh Shastry. It was submitted that, Shri Nagesh Shastry 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. The Ld.AR submitted that there was no fault of assessee in filing such return so as to claim the fraudulent refund. The entire issue of fraudulent claims was by Mr. Nagesh Shastry only, and the assessee was bonafide in his action and there was no fault from the assessee's side.

5. The Ld. 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.

6. It is submitted by the Ld.AR that an identical issue arose before this *Tribunal* in case of *Shri Ravikiran Netla vs. ITO* in ITA No. 2123/Bang/2018 by order dated 10.09.2020 for A.Y. 2014-15 considered this issue as under:

*“6. We have heard both the parties and perused the material on record. In the quantum appeal order dated 19.2.2018, the CIT(Appeals) recorded these facts in para 5 of his order that Mr. Nagesh Shastry was instrumental in filing the revised return. However, the same facts and arguments in the penalty proceedings are not considered by the CIT(Appeals). 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.*

*7. In the result, the appeal of assessee is allowed for statistical purposes.”*

7. Admittedly, in the present facts of the case, the Ld.AO found certain deductions under Chapter VIA which is not supported by documents. The assessee has also claimed loss from house property for interest paid for housing loan which is not supported by evidences. In the interest of justice, we deem it proper to remand this issue back to the Ld.AO with a similar direction as observed by *Coordinate Bench of this Tribunal* in case of *Shri Ravikiran Netla vs. ITO (supra)*.

8. The Ld.AO is directed to consider the facts and decide the issue afresh in accordance with law.

Needless to say that proper opportunity of being heard must be granted to assessee.

**Accordingly, the grounds raised by assessee for all the years under consideration stands allowed for statistical purposes.**

**In the result, all the three appeals filed by the assessee stands allowed for statistical purposes.**

**Order pronounced in the open court on 08<sup>th</sup> May, 2023.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 08<sup>th</sup> May, 2023.  
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore