

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

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

ITA No.314/Bang/2023
Assessment Year: 2017-18

Dhanasingh Nagamuthu #82, 11 th Cros, 1 st Stage Near KNE School Indiranagar Old Binnamangala Bangalore 560 038 Karnataka PAN NO : AETPN0217P	Vs.	ITO Ward-3(3)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	N O N E
Respondent by	:	Smt. Oriyadarshini Baseganni, D.R.

Date of Hearing	:	07.06.2023
Date of Pronouncement	:	07.06.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC passed u/s 250 of the Income-tax Act,1961 [‘the Act’ for short] for the assessment year 2017-18 dated 7.2.2023. The assessee has raised following grounds of appeal:

1. “CIT (A) order is opposed to the law and facts of the case.
2. CIT (A) has not given the findings examining the Grounds of Appeal and Facts of the Case.

Page 2 of 5

3. *The CIT (A) decision is (The appellant prays that reply was given on 21.11.2021, which requested to keep the penalty proceedings pending as required u/s 275 (1) (a). The appellant maintains that: "AO has not given proper opportunity to prove the reasons hence appellant is deprived of proper opportunity as required u/s 274 (1). As per the national faceless scheme appellant should have been given proposed penalty order which AO has failed to provide hence, appellant is deprived of opportunity of rebutting the penalty".*

I find no merit in the stand taken by the appellant. The mother order being in appeal before the ITAT does not in any way prevent the AO from imposing penalty under this section. The merits of the assessment order will be dealt with by the ITAT.

4. *The CIT (A) finding that Mother order (Assessment Order) is pending before ITAT is not correct. However, appeal is pending before the CIT (A).*
5. *CIT (A) has not examined the Facts of the case and has not given decision on Grounds of appeal.*
6. *In view of the above facts, appellant is denied proper justice. Hence, the Hon'ble ITAT may delete the penalty and render justice to the appellant."*

2. Facts of the case are that the assessment was completed u/s. 144 of the Act and while completing the assessment AO issued notice u/s 272A (1)(d) of the Act. The assessee filed appeal and reply was submitted to CIT(A) on 07.01.2021 establishing clearly the assessment is bad in law. According to the assessee he has not received any communication till date u/s 272(A)(1)(d). It was submitted before NFAC that notice was received by assessee on 19.03.2021 issued by Sri Chandan Kumar Srinivas. However, the penalty was levied by Sri Visheshha Prakash and this is not proper as required u/s 272A (3)(a)(a) of the Act. The assessee requested to keep pending the penalty Proceedings. The ld. AO cannot levy the penalty as per section 275(1)(a) which AO overlooked. According to assessee there was no proper opportunity as required u/s 274(1) of the Act was given. AO has stated in the penalty

Page 3 of 5

order that the appeal is not filed against issue of notice u/s 272(A)(1)(d). The ld. AO's findings that the assessee failed to establish reasons for non-compliance of notice issued u/s 143(1) of the Act. It was the case of the assessee that AO has never given opportunity at the time of assessment and also while levying the penalty AO has not established any mens rea.

3. We have heard the rival submissions and perused the materials available on record. None appeared for the assessee. We proceed to adjudicate the appeal after hearing the ld. D.R. In this case, assessment order u/s 144 of the Act dated 23.11.2019 was passed with addition of Rs.11,29,000/- as cash deposit into bank account of assessee. A penalty show cause notice u/s 272A(1)(d) of the Act dated 23.11.2019 was issued to the assessee during the course of assessment proceedings for the non-compliance of notice issued u/s 142(1) dated 8.3.2018. A show cause notice was also issued to the assessee on 15.11.2021 as to why the penalty should not be levied for non-compliance to the statutory notice issued u/s 142(1) of the Act dated 8.3.2018. The assessee has filed a reply dated 21.11.2021 stating that assessee's case is pending before the First Appellate authority. The AO has not agreed with the contention of the assessee's counsel levied penalty of Rs.10,000/- for non-compliance of notice issued u/s 142(1) of the Act dated 8.3.2018. In the mean time, the AO has issued the letter dated 23.10.2019 to the assessee, which reads as follows:

"The contents of the letter dt.23.10.2019 addressed to the assessee is as under:

Notice u/s 142(1) was issued and served by E-mail, requiring you to file your income tax return for the AY-2017-18. You have failed to file R/I. In the circumstances, it is proposed to complete the assessment ex-parte (Best judgement Assessment u/s 144 of the Act). From the information available with the department, there is cash deposit of Rs. 6,24,500/- during demonetisation period at City Union Bank Ltd, Indiranagar Branch, Bangalore, Rs.2,50,000/- in State Bank of India, Indiranagar &

Page 4 of 5

Rs.2,54,500/- in Syndicate Bank, Indiranagar Bangalore. As there is no return of income filed, the sources for cash deposit remained unexplained.

Section 69A of the IT Act, is reproduced as under:

Where in, any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

In the circumstances it is proposed to treat the amount of Rs. 11,29,000/- as unexplained cash u/s 69A and taxed u/s 115BBE at the rate of 60%.

Opportunity to explain the sources along with necessary proof was afforded by 28.10.2019

6. Though the show cause letter was issued through ITBA, hard copy was sent by speed post and served on the assessee. The assessee filed a manual letter on 31.10.2019 requesting for some time to get the details and then reply. The assessee failed to make any submissions even as on today.

7. Thus the assessee failed to explain with necessary proof the source for cash deposited to the tune of Rs.11,29,000/-. In the circumstances, there is no option other than treating the cash deposit of Rs.11,29,000/- as unexplained money.”

3.1 Thus, from the above fact it is clear that the assessee has filed a manual letter dated 31.10.2019 requesting for some time to get details and then reply. However, the AO passed the assessment order on 23.11.2019 without disposing of the assessee's letter dated 31.10.2019 either rejecting the said application or granting time. We also found that ultimately assessment was completed by AO u/s 144 of the Act making addition of Rs.11,29,000/-, which is cash deposit in various bank accounts. In our opinion, it is the duty of the AO to dispose of any communication/letters filed by the assessee before him at the time of assessment or giving finding about those letters in his order. Being so, the inaction of the AO on the various letters filed

Page 5 of 5

by the assessee which enable the assessee to believe that the time to comply with the extension of time as prayed was granted. Therefore, in the circumstances, we are of the opinion that it cannot be said that assessee is guilty of contumacious or apparent conduct to comply with the notice u/s 142(1) of the Act. Thus, it is not a fit case for levy of penalty u/s 272A(1)(d) of the Act. Accordingly, we delete the penalty levied by AO at Rs.10,000/-. Hence, the ground of appeal of the assessee in the present appeal is allowed.

4. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 7th June, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 7th June, 2023.
VG/SPS

Copy to:

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

By order

Asst. Registrar,
ITAT, Bangalore.