

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 122/Asr/2023
Assessment Year: 2017-18

Shri Sukhbir Singh Bedi C/o Shri P.N. Arora Advocate 3 rd Floor SRK Mall, 14-Kennedy Avenue Mall Road, Amritsar- 143001, Punjab	Vs.	The ITO Ward, Gurdaspur Punjab
PAN: AFFPB6127H		
APPELLANT		RESPONDENT

Assessee by : Shri P.N. Arora
Revenue by : Shri Pardeep Kumar, Sr. DR

Date of Hearing : 15/06/2023
Date of Pronouncement : 20/06/2023

ORDER

Per Dr. M. L. Meena, AM:

This appeal is filed by the Assessee against the order of the Ld. CIT(A)/NFAC, Delhi dt. 07/03/2023 for the Assessment Year 2017-18.

2. In the present appeal Assessee has raised the following grounds:

1. That the Penalty order passed by the Assessing Officer u/s 272A(l)(d) as well as the order of the Learned CIT(A), National Faceless Appeal Centre, Delhi thereby confirming the same are both against the facts of this case and are untenable under the law.

2. That no reasonable opportunity of being heard was allowed before levying the penalty of Rs.10,000/- u/s 272A(l)(d) of the IT Act, 1961. As such the penalty order as well as the order of the worthy

CIT(A) are bad in the eyes of law and the same are liable to be cancelled.

3. That the CIT(A) has blown hot and cold in the same breath and decided the appeal without application of mind and without appreciating the facts of the case.

4. That the penalty order is illegal, invalid and void abinitio as the appeal filed before the CIT(A) has been heard against the appeal instituted on 04/09/2021 wherein the penalty of Rs.12,000/- was levied against which the appeal was filed with CIT(A) NFAC on 04/09/2021. But the order itself is illegal and invalid as the CIT(A) has further decided this appeal which was instituted on 04/01/2020 against the quantum appeal against order u/s 143(3). As such there is no application of mind and as such the order passed is bad in the eyes of law and the same is liable to be cancelled.

5. That any other ground of appeal which may be argued at the time of hearing of the appeal.

3. At the outset, the learned Consul for the assasse submitted that the CIT appeal/NFAC, erred in confirming the penalty levied under section 272A(1)(d) of the Act without granting reasonable opportunity of being heard to the appellant. He further contended that he has confirmed the penalty without appreciating the facts of the case and passed the order without application of mind thereof. It is argued by the council that the learned CIT appeal has adjudicated the issue of quantum appeal as against the penalty. Thus, the order pass by the CIT Appeal is bad in law and same is liable to be quashed.

4. Per Contra, the learned DR for department submitted that the CIT appeal has adjudicated the appeal after granting sufficient opportunity of being heard to the assessee. However, he agreed in principle that the CIT has not adjudicated the appeal on the issue of penalty in a specific. Therefore, he had no objection to send the matter back to the file of the CIT appeal to adjudicate the issue of the confirmation of penalty afresh.

5. We have heard the rival contention, perused the material on record and the impugned order. Admittedly, CIT appeal had not adjudicated the matter of levy of penalty under section 271A(1)(d) of the act, rather discussed the quantum addition, holding the appeal stands dismissed in casual manner by observing as under:

The appellant, an individual, non filer of the return of income for the A.Y.

2017- 18 on 07/02/2018 Declaring total income of Rs.9,43,320/-. The AO passed

the order u/s 143(3) of the IT Act, 1961 and made disallowance of Rs.35,00,000/-

u/s 69A. Aggrieved by the said order, appellant is on appeal.

4. The hearing in this case was fixed on the following dates with due intimation

electronically:

SL. NO.	DATE OF NOTICE	DATE OF HEARING	REMARK
1.	27/02/2020	02/03/2020	No Reply
2.	24/12/2020	05/01/2021	No Reply
3.	26/08/2022	02/09/2022	No Reply
4.	21/09/2022	06/10/2022	No Reply
5.	13/10/2022	25/10/2022	No Reply

None of the above opportunities were availed by the appellant.

5. All notices were sent by registered mail. Sufficient opportunity has been afforded to the appellant. It appears that, the assessee is not interested pursuing in its appeal. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known dictum, "VIGILANTIBUS NON DORMIENTIBUS JURA SUBVENIUNT".

6. The provisions of Sec.250(6) provides that the appellate orders of CIT(A) are to state the points arising out of assessee's appeal. The order shall give out the reasons for such decisions. The underline rationale of the position is that such order is further appealed.

7. Speaking order obviously will enable any party to know positively the points decided in his favour or against. Absence of formulation of the point of decision for want of quality due to the lack of information inadvertently puts the authority in a Quandary.

8. Sec.250(6) expressly embodies such provision, if an assessee fails to appear before the CIT(A) and fails to submit the relevant documents, the CIT(A) is restricted to the disposals of the appeal based on the merits available in the record.

9. This stand was furthered by the High Court in the following Judgements.

1. SHREE BALAJI WOOLLEN MILLS vs. ASSISTANT COMMISSIONER OF INCOME TAX ITAT, DELHI 'G' BENCH. ITA. No. 1238 & 1239/Del/2011; Asst. yr. 2005-06

2. PRAVEEN KUMAR PRUTHI vs. INCOME TAX OFFICER

ITAT, DELHI "F BENCH ITA. No. 478/Del/2011; Asst. yr. 1999-2000

3. ASSISTANT DIRECTOR OF INCOME TAX vs. WHITE INDUSTRIES AUSTRALIA LTD

ITAT, BENCH 'C KOLKATA ITA No. 507/Kol/2010; Asst yr. 1992-93

4. JAI INTERNATIONAL vs. DEPUTY COMMISSIONER OF INCOME TAX

ITAT, JODHPUR BENCH, ITA No. 138/id/2018; Asst. yr. 2012-13

5. RAMESH SHARMA vs. ASSISTANT COMMISSIONER OF INCOME TAX

ITAT, DELHI 'F' BENCH, ITA No. 2911/Del/2013; Asst. yr. 2006-07

6. ESTATE OF LATE TUKOJIRAO HOLKAR vs. COMMISSIONER OF WEALTH TAX

HIGH COURT OF MADHYA PRADESH, Misc. Civil Case No. 302 of 1991

7. U-LIKE PROMOTERS (P) LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX

ITAT, DELHI 'H' BENCH,

ITA Nos. 1569 to 1572/Del/2009 and 1377 to 1379/Del/2012;

Asst. yrs. 1998-99 to 2004-05

7. In view of the above facts the appeal, following the above explained rationale, the appeal stands dismissed.

6. From the above it is evident that the learned CIT appeal has adjudicated the issue of quantum appeal as against the penalty. Further, the appellant has not been granted adequate opportunity of being heard. Under the facts and circumstances of the case., We consider it deem fit to restore the matter back to the file of the CIT appeal to adjudicate the issue

of levy of penalty under section 271(1)(d) afresh, after granting sufficient and reasonable opportunity of being heard to the assessee. No doubt, the assessee would cooperate in fresh proceedings before the CIT appeal. Thus, the matter is restored to CIT appeal.

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

Order pronounced in the open court on 20/06/2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

*A.G/DOC**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The DR, I.T.A.T.

True Copy
By Order