

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
Ms. MADHUMITA ROY, JUDICIAL MEMBER

ITA No.485/Bang/2023
Assessment year : 2015-16

Krishnamurthy Narayanamurthy, 90/1, Yathindralaya, 7 th Main Road, 2 nd Cross, Begur Road, Hongasandra, Bengaluru – 560 068. PAN: ACUPN 6583F	Vs.	The Income Tax Officer, Ward 4(3)(4), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sukruth N Segu, CA
Respondent by	:	Shri Subramanian S., Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	04.09.2023
Date of Pronouncement	:	04.09.2023

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal by the assessee is against the DIN & Order No.ITBA/NFAC/S/250/2023-24/1052726630(1) dated 10.05.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC] for the AY 2015-16 challenging the penalty levied u/s. 271(1)(c) of the Income-tax Act, 1961 [the Act].

2. The brief facts of the case are that the assessee filed return of income on 03.08.2016 declaring total income of Rs.2,65,410. The case was selected for scrutiny and statutory notices were issued to the

assessee. During the course of assessment proceedings, it was noticed that there were cash deposits of Rs.1,06,19,947 in the SB accounts during the previous year, out of which assessee explained to the extent of Rs.86,27,558 and the balance amount of Rs.19,92,389 could not be explained by the assessee. Accordingly the AO made addition of Rs.19,92,389 to the total income of the assessee, which was confirmed by the CIT(Appeals).

3. The AO initiated penalty proceedings for concealment of income / inaccurate particulars of income u/s. 271(1)(c) of the Act and issued a show cause notice to the assessee for which there was no response from the assessee. The AO as per Explanation (1) to section 271(1)(c) observed that the burden of proof is on the assessee to explain that there is no concealment or has furnished inaccurate particulars of income relying on the Hon'ble Supreme Court judgment in 251 ITR 99 (SC). Since the assessee did not comply to the show cause notice, the AO levied penalty u/s. 271(1)(c) of the Act at Rs.6,21,625.

4. On appeal, the CIT(Appeals) observed that hearing was fixed on several occasions but no written submissions were filed by the assessee. Since the appeal being very old, the CIT(Appeals) passed ex parte order on the basis of Form 35 and statement of facts and dismissed the appeal of the assessee. Aggrieved by the order of the CIT(Appeals), the assessee is in appeal before the Tribunal.

5. At the outset, the Id. AR of the assessee submitted on the preliminary issue that on the quantum appeal of the assessee, the

coordinate Bench of this Tribunal remitted this issue back to the Assessing Officer for fresh consideration in ITA No.2559/Bang/2019 dated 27.4.2020 and therefore the penalty order u/s. u/s. 271(1)(c) of the Act does not survive. The Id.AR further submitted that the assessing officer in the penalty notice issued dated 30.12.2017 has not specified under which limb the penalty is to be levied. Accordingly he relied on the judgment of Hon'ble Karnataka High Court in S .K. Employees Co-op. Society Ltd. (WP No.21835 of 22 (T-IT) and Hon'ble Supreme Court judgment in CIT v. SSA's Emerald Meadows [2016] 73 taxmann.com 248 (SC) and PCIT v. Golden Peace Hotels & Resorts (P) Ltd. [2021] taxmann.com 249 (SC).

6. The Id. DR relied on the orders of lower authorities; however, he did not controvert the submissions of the assessee that the quantum appeal of the assessee has been remitted back to the AO by the Tribunal.

7. After hearing both the sides, perusing the entire material on record and the orders of the lower authorities, we note that the Id. CIT(Appeals) while confirming the penalty, has not taken note of the order of the Tribunal dated 27.04.2020 in the quantum appeal, where the issue was remitted back to the Assessing Officer with the following observations:-

“7. In view of the above order of the Tribunal in the case of Sri.Byarakar Manjappa Veeresh (supra), I am inclined to direct the Assessing Officer to give due credit to the opening balance of the year and also towards earlier withdrawals, after verifying the books of account of the assessee. With these

observations, we remit the issue to the file of the Assessing Officer for fresh consideration.”

8. Since the original assessment order dated 30.12.2017 itself is restored to the file of Assessing Officer for fresh consideration, the consequent proceedings in the penalty order arising out of the same has no legs to stand. Accordingly, the appeal of the assessee stands allowed. Accordingly, the other grounds and submissions of both the parties require no adjudication.

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

Pronounced in the open court on this 04th day of September, 2023.

Sd/-

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 04th September, 2023.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.