

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

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

|                                      |
|--------------------------------------|
| ITA Nos. 7 & 8/Bang/2024             |
| Assessment years : 2017-18 & 2018-19 |

|   |     |  |
|---|-----|--|
| Veetil Kizkhakke Nirmal,<br>B-1404, NCC Maple Heights,<br>Mahadevapura Marathahalli ORR,<br>Bangalore – 560 048.<br><b>PAN: AEUPN 5702N</b> | Vs. | The Income Tax Officer,<br>Ward 5(3(6)),<br>Bangalore. |
| APPELLANT   |     | RESPONDENT   |

|               |   |   |
|---------------|---|---|
| Appellant by  | : | Shri Tarun, G., Advocate                            |
| Respondent by | : | Shri Subramanian S., Addl.CIT(DR)(ITAT), Bengaluru. |

|                       |   |            |
|-----------------------|---|------------|
| Date of hearing       | : | 04.03.2024 |
| Date of Pronouncement | : | 04.03.2024 |

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

These appeals are filed by the assessee against the separate orders of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], dated 28.11.2023 for the AYs 2017-18 & 2018-19 respectively confirming the levy of penalty u/s. 270A of the Act in both the appeals.

2. Briefly stated the facts are that the case was selected for scrutiny and statutory notices were issued to the assessee. The assessment was completed making disallowance of Chapter VIA for

both the assessment years and disallowance of HRA also for AY 2018-19. The assessee paid due taxes.

3. Thereafter, the AO passed penalty order u/s. 270A of the Act for both the assessment years levying penalty of Rs.19,08,100 and Rs.26,30,200 respectively.

4. Before the CIT(Appeals), the assessee made detailed written submissions against the penalty to which the CIT(Appeals) has considered in his order and dismissed the appeals of the assessee. Aggrieved from the above order, the assessee is in appeal before the ITAT.

5. The Id. AR reiterated submissions made before the lower authorities and submitted that the assessee is a salaried employee and he approached M/s. Praveena & Associates for filling of the income tax return and submitted that the tax practitioner claimed deductions under Chapter VIA. Accordingly the assessee got refund. The appellant filed a letter from the Income Tax practitioner fortifying the facts and mistake at their end in relation to return of income filed and the said letter was submitted as Annexure B. The tax practitioner also submitted that the action was initiated against the tax practitioner by filing a complaint with the police, B6 Kolathur Police Station, Chennai which was enclosed as Annexure C. He also submitted that the provisions of section 270A will not apply because the assessee paid tax and did not file appeal before the first appellate authority. Form 68 was mainly filed before the AO for getting immunity in terms of

section 270AA of the Act which were enclosed as Annexure D & E. He submitted that the CIT(Appeals) has wrongly dismissed the appeals of the assessee. He submitted that similar issue has been decided by the coordinate Bench in ITA No.411/Bang/2013 for AY 2017-18, order dated 14.09.2023 in the case of Akshata Vishwas Tudavekar, who is assessee's wife, and the issue is remitted back to the AO as per para 8.1 of the order.

6. On the other hand, the Id. DR relied on the orders of lower authorities and submitted that there was as malafide intention on the part of assessee to make claim of deduction under Chapter VIA which was not eligible to the assessee resulting refund. He is filing returns regularly and therefore he was aware of the deductions provided under Chapter VIA for salaried employee. He further submitted that the employer had deducted TDS u/s 192B as per information provided before the end of the financial year. He also submitted that the return for AY 2017-18 was filed on 30.07,2017 and for AY 2018-19 return was filed on 24.07.2018 and there is one year gap. The submissions made before the lower authorities that tax practitioner has wrongly claimed deduction which was not in the knowledge of the assessee is completely wrong. Before filing return of income, verification is required on the part of the assessee and the assessee is working as software technician and it is completely wrong that he was not aware of the tax procedure because the employer issued Form 16 which contains the complete details of income from salary and eligible

deductions. Therefore the lower authorities are justified in imposing penalty and it should be sustained.

7. Considering the rival submissions, we noted that the assessee is a salary employee and filing return regularly and he has claimed deduction under Chapter VIA more than the amount prescribed in Form 16 issued by the employer, to which during the assessment proceedings it was not accepted by the AO. As per submission, he took the help for filing return of tax practitioner named noted above and claimed excessive deduction. Therefore the AO has imposed penalty which has been confirmed by the CIT(Appeals). During the course of hearing a decision of similar issue by the coordinate Bench in ITA No.411/Bang/2023 dated 14.9.2023 was produced in which it has been held as under:-

*“8. We have heard the rival submissions and perused the materials available on record. In our opinion, similar issue came for consideration before this Tribunal in the case of Sri Vinod Radhakrishna in ITA Nos.207 to 209/Bang/2023 wherein the Tribunal vide order dated 20.6.2023 held as under:*

*“4. After hearing both the parties, we are of the opinion that similar issue came for consideration before this Tribunal in the case of Shri Ravikiran Netla in ITA No.2123/Bang/2018 dated 10.9.2020 wherein held 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.”*

*4.1 Further, similar view has been taken in the case of Mr. Veereshayya Angadi in ITA Nos.10 & 11/Bang/2023 vide order dated 19.6.2023.*

*4.2 It is also followed in the case of Shri Bolar Jayaraj Shetty in ITA Nos.184 to 186/Bang2023 dated 8.5.2023 by the Tribunal.*

*4.3 In view of the above, taking a consistent view, we remit this issue in dispute to the file of AO for fresh consideration to see whether the assessee is bonafide in claiming excessive refund. If the AO finds that if the assessee is bonafide and it was acted at the instigation of the tax consultant Mr. Nagesh Shastry, no penalty shall be levied u/s 271(1)(c) of the Act.*

*5. The issue in other appeals in ITA Nos.208 & 209/Bang/2023 for the AYs 2015-16 & 2016-17 are similar and applying the same ratio, the issue in these two appeals is remitted to the file of AO on similar directions.*

*6. In the result, all the appeals of the assessee in ITA Nos.207 to 209/Bang/2023 for the AYs 2014-15 to 2016-17 are partly allowed for statistical purposes.”*

*8.1 The facts of the present case is similar to the facts of the case cited (supra) in the case of Sri Vinod Radhakrishna. Hence, the issue in dispute is also remitted to the file of ld. AO to decide it afresh by verifying whether assessee's consultant is instrumental in claiming excess deduction under Chapter VIA of the IT Act on behalf of assessee by indulging in malpractice or assessee is responsible for the same. If the assessee's consultant is wholly*

*responsible for such fraudulent act and the assessee's act is bonafide, penalty cannot be levied u/s 270A of the Act. With this observation, we remit this issue in dispute to the file of ld. AO for fresh consideration after giving an opportunity of hearing to the assessee."*

8. Respectfully following the above judgment, we remit this issue in both the assessment years to the file of the AO to decide afresh in the above terms.

9. In the result, the appeals of the assessee are allowed for statistical purposes.

Pronounced in the open court in virtual hearing on this 04<sup>th</sup> day of March, 2024.

Sd/-  
( GEORGE GEORGE K. )  
VICE PRESIDENT

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 04<sup>th</sup> March, 2024.

*/Desai S Murthy /*

Copy to:

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

By order

Assistant Registrar  
ITAT, Bangalore.