

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

**Before Shri George George K, Vice-President &
Shri Laxmi Prasad Sahu, Accountant Member**

ITA No.151/Bang/2024 : Asst.Year 2009-2010
ITA No.152/Bang/2024 : Asst.Year 2010-2011
ITA No.153/Bang/2024 : Asst.Year 2011-2012
ITA No.154/Bang/2024 : Asst.Year 2012-2013

Sri.Gangadhar MurthyChennigappa 322, 3 rd A Cross, 2 nd Block 3 rd Stage, Basaveshwaranagar Bengaluru - 560 079. PAN : AGIPG2668N.	v.	The Assistant Commissioner of Income-tax, Circle 6(1)(1) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.Hemant Pai, CA
Respondent by : Ms.Neera Malhotra, CIT-DR

Date of Hearing : 13.03.2024	Date of Pronouncement : 13.03.2024
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ORDER

Per George George K, Vice-President :

These appeals at the instance of the assessee are directed against four orders of the CIT(A) (all orders of the CIT(A) are dated 29.11.2023) passed u/s. 250 of the Income-tax Act, 1961 ("the Act" hereinafter). The relevant assessment years are 2009-2010 to 2012-2013.

2. Common issue is raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order. The solitary issue that is raised in these appeals is whether the CIT(A) is justified in passing an *ex parte* order and confirming the penalty imposed u/s.271D of the Act.

3. The brief facts of the case are as follows:

For the assessment years 2009-2010 to 2012-2013, the Assessing Officer had imposed penalty u/s.271B of the Act. Against the order of penalty imposed u/s.271D of the Act, the assessee filed appeals before the first appellate authority. The CIT(A) allowed the appeals of the assessee and deleted the penalty imposed u/s.271D of the Act by noting that the quantum assessment order has been set aside.

4. Aggrieved by the order of the CIT(A), the Revenue filed appeals before the Tribunal. The Tribunal vide its order dated 20.09.2021 in ITA Nos.2631, 2633 to 2637/Bang/2018, allowed the appeals of the Revenue. The Tribunal held that the assessment orders and the orders imposing penalty u/s.271D / 271E of the Act are independent of each other. In other words, it was held that penalty u/s.271D and 271E of the Act does not depend on initiation of penalty in the assessment order. Accordingly, the matter was restored to the files of the CIT(A) to decide the issue on merits.

5. Subsequent to the remand by the ITAT, the CIT(A) issued five notices within a span of one month and one week. Since there was no response / compliance to the same, the CIT(A) passed an *ex parte* order, by dismissing the appeals of the assessee *in limine*.

6. Aggrieved by the orders of the CIT(A) dismissing the appeals for assessment years 2009-2010 to 2012-2013, the assessee has filed the present appeals before the Tribunal.

The learned AR submitted that the CIT(A) subsequent to the remand had issued five hearing notices from 04.10.2023 to 13.11.2023. It was submitted that the CIT(A) is not justified in stating that there is no compliance to the notices issued. It was stated that for the last hearing notice issued on 13.11.2023 (for compliance on or before 20.11.2023), the assessee had sought for adjournment. Copy of acknowledgement is placed on record. It was therefore prayed that in the interest of justice and equity the appeals may be restored to the files of the CIT(A) for a decision to be rendered on merits.

7. The learned Departmental Representative supported the order of the CIT(A).

8. We have heard rival submissions and perused the material on record. Admittedly the CIT(A) had dismissed the appeals of the assessee subsequent to the remand by the ITAT *in limine*. The reason for CIT(A) to decide the appeal *ex parte* was that the assessee has not complied with the five notices issued from the Office of the first appellate authority. The learned AR has placed on record the adjournment application filed on 20.11.2023, seeking time of one month for filing written submissions. In the interest of justice and equity, we are of the view that the assessee ought to be provided with one more opportunity to represent its case. Accordingly, the appeals are restored to the files of the CIT(A). The assessee is directed to co-operative with the Revenue and shall not seek

adjournment of the appeals without valid reasons. It is ordered accordingly.

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

Order pronounced on this 13th day of March, 2024.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
VICE-PRESIDENT

Bangalore; Dated : 13th March, 2024.

Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Bengaluru.
4. The Pr.CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore