

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.166/Ind/2022 (AY: 2012-13)

ACIT (Central)-2, Bhopal	बनाम/ Vs.	M/s.Balaji Farms and Reality, 158,3 rd Floor, Zone-II, M.P.Nagar, Bhopal (PAN:AALFB9630L)
(Revenue/Appellant)		(Assessee/Respondent)

Cross-Objection No.5/Ind/2023 (AY: 2012-13)

M/s.Balaji Farms and Reality, 158,3 rd Floor, Zone-II, M.P.Nagar, Bhopal (PAN:AALFB9630L)	बनाम/ Vs.	ACIT (Central)-2, Bhopal
(Assessee/Cross-Objector)		(Revenue/Respondent)

Assessee by	Ms.Nisha Lahoti and Shri Vijay Bansal, ARs
Revenue by	Shri Ashish Porwal, Sr. DR

Date of Hearing	12.03.2024
Date of Pronouncement	22.03.2024

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 21.03.2022 passed by Commissioner of Income-tax (Appeal)-3, Bhopal ["CIT(A)"] which in turn arises out of penalty-order dated 27.03.2019 passed by ITO-1(2), Bhopal ["AO"] u/s 271(1)(c) of the Income-tax Act, 1961 ["the Act"] for assessment-

year ["AY"] 2012-13, the revenue has filed captioned appeal and the assessee has filed captioned cross-objection on following grounds:

Revenue's appeal:

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty amounting to Rs. 59,00,000/- levied u/s 271(1)(c) against original assessment proceedings for A.Y. 2012-13.*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in misinterpreting the facts of the case in holding that penalty proceedings qua the original assessment order becomes void, ignoring the fact that addition of Rs. 21,00,000/- (3,09,08,000 – 2,88,08,000/-) was made in re-assessment order u/s 147 r.w.s. 143(3) and penalty was initiated on this amount only, hence neither the addition nor penalty initiated in original assessment order is void.*

Assessee's Cross-Objection:

1. *On the facts and circumstances of the case and applicable law, the Ld. CIT(A) erred in not considering the fact that penalty notices do not mention any specific limb for initiation of penalty proceedings u/s 271(1)(c).*
 2. *On the facts and circumstances of the case and applicable law, the Ld. CIT(A) erred in not considering that penalty of Rs. 59,00,000/- cannot be imposed u/s 271(1)(c) as the addition has been made in the original assessment order passed u/s 143(3) by applying the provisions of section 50C.*
 3. *On the facts and circumstances of the case and applicable law, the Ld. CIT(A) erred in issuing penalty notice u/s 274 r.w.s. 271(1)(c) when the original assessment order passed u/s 143(3) has merged into reassessment order passed u/s 147 r.w.s. 143(3) subsequently on the same issue for which the penalty has been imposed.*
2. The brief facts of case are as under:
- (i) The assessee-firm filed original return of AY 2012-13 on 01.10.2012 declaring a total income of Rs. 57,82,476/- consisting of business income from sale of a land. The return of assessee was subjected to scrutiny-assessment and the AO completed original assessment vide

order dated 09.03.2015 u/s 143(3) wherein he re-characterised business income as capital gain and also assessed total income at Rs. 1,90,80,477/- (R/o to Rs. 1,90,80,480/-). In the assessment-order so made, the AO recorded satisfaction for imposition of penalty u/s 271(1)(c) and simultaneously, vide show-cause notice dated 09.03.2015, initiated penalty proceeding. Against assessment-order, the assessee filed appeal before CIT(A) but, however, the CIT(A) passed *ex-parte* order dated 30.03.2017 dismissing assessee's appeal. It is learnt that the assessee did not file any appeal further.

- (ii) Subsequently, the AO formed a belief that the income of assessee had escaped assessment, accordingly he undertook case for re-assessment through show-cause notice u/s 148 dated 03.03.2016. The AO completed re-assessment vide order dated 26.12.2016 u/s 147 re-assessing total income at Rs. 2,11,80,477/-. This resulted in enhancing originally assessed income by Rs. 21,00,000/-. In the re-assessment order so made, the AO again recorded satisfaction for imposition of penalty u/s 271(1)(c).
- (iii) Thereafter, vide show-cause notice dated 06.03.2019, the AO resumed penalty proceeding originally initiated vide show-cause notice dated 09.03.2015. Ultimately, the AO passed penalty-order u/s 271(1)(c) on 27.03.2019 imposing a penalty of Rs. 59,00,000/- *qua* the income of Rs. 1,90,80,480/- assessed in original assessment-order.

- (iv) Aggrieved by penalty-order, the assessee carried matter in first-appeal on several grounds whereupon the CIT(A) deleted penalty by passing following order:

“3.1.2 I have considered the factual matrix of the case, plea raised by the appellant and findings of the AO. As per facts discussed above, the original assessment order was passed determining total income at Rs. 1,190,80,480/-. Thereafter, notice u/s 148 of the Act was issued on 03.03.2016 and reassessment order was passed determining total income at Rs. 2,11,80,477/- and penalty proceedings u/s 271(1)(c) of the Act were initiated. Subsequently, the appeal, against original assessment order was dismissed vide order dated 30.03.2017 and therefore, the Id. AO levied penalty of Rs. 59,00,000/- u/s 271(1)(c) of the Act, which is under consideration. As a matter of fact, the reassessment proceedings were initiated on the addition made during original assessment proceedings and the addition made during original assessment proceedings includes addition made during original assessment proceedings. Further, Id. AO vide order u/s 147 r.w.s. 143(3) of the Act has separately initiated penalty proceedings u/s 271(1)(c) of the Act. Hence, the penalty proceedings qua the original assessment order become void. Therefore, penalty levied by the Id. AO amounting to Rs. 59,00,000/- is directed to be deleted. Therefore, appeal on these grounds is allowed.”

- (v) Now, the revenue is aggrieved by CIT(A)'s order and come in appeal before us. The assessee has also filed Cross-Objection.

3. Ld. DR for revenue straightaway carried us to the order of first-appeal passed by CIT(A), as re-produced above, and submitted that the CIT(A) has deleted penalty on a wrong understanding of law that once a re-assessment order has been passed and the penalty proceeding u/s 271(1)(c) has been separately initiated via order of re-assessment, the penalty proceeding qua the original assessment-order becomes void. Ld. AR submitted that under the scheme of Income-tax Act, 1961, the original scrutiny-assessment u/s 143(3) and subsequent re-assessment u/s 147 are altogether separate, distinct and independent proceedings and for that reason, the original

assessment-order dated 09.03.2015 assessing total income at Rs. 1,90,80,480/- and re-assessment order dated 26.12.2016 re-assessing total income at Rs. 2,11,80,477/- are also separate and independent orders. To illustrate, he submitted that even if the re-assessment order dated 26.12.2016 is quashed for any reason, it would not mean that the original assessment-order dated 09.03.2015 would also come to an end. He submitted that there is no merging of original assessment into re-assessment and both assessments have their separate identities *qua* the items and quantum of income assessed/re-assessed therein and so also the penalty u/s 271(1)(c) *qua* original assessment would be different from penalty *qua* re-assessment. Ld. AR pointed that the AO has imposed penalty of Rs. 59,00,000/- in order dated 27.03.2019 *qua* the income of Rs. 1,90,80,480/- assessed in original assessment-order and it is nothing to do with re-assessment. He submitted that the CIT(A) is therefore wrong in deleting penalty on the footing that the original penalty proceedings had become void.

4. On the other hand, Ld. AR for assessee defended the order passed by CIT(A) and submitted that once re-assessment order has been passed, the original assessment merged into the re-assessment and loses its separate existence. Ld. AR further submitted that even otherwise, the assessee has also filed Cross-Objection on certain grounds which are quite substantial and can be decided in favour of assessee.

5. We have considered rival submissions of both sides and perused the facts of case as also the orders of lower-authorities. After a careful consideration, we find that the CIT(A) has deleted penalty by observing that once re-assessment order has been passed and the penalty proceeding u/s 271(1)(c) has been initiated in such re-assessment, the penalty proceeding initiated in original assessment become void. But this understanding of Ld. CIT(A), in our considered view, is not correct. Ld. DR is very much correct that the original assessment and re-assessment are two independent proceedings and so also the penalty proceedings respectively initiated therein. His illustrative contention is meritorious that even if the re-assessment order is quashed for any reason, the original assessment-order would continue to exist. As a matter of fact, we find that the AO has imposed penalty of Rs. 59,00,000/- *qua* the income of Rs. 1,90,80,480/- assessed in original assessment-order for which separate penalty notices dated 09.03.2015/06.03.2019 were issued. It is noteworthy that the originally assessed income of Rs. 1,90,80,480/- is further enhanced to Rs. 2,11,80,477/- in re-assessment and therefore the additional income assessed in re-assessment would have a separate penalty proceeding u/s 271(1)(c), independent of penalty *qua* the income of Rs. 1,90,80,480/- assessed in original assessment. That is the precise reason that the AO has initiated separate penalty proceeding in the order of re-assessment. Therefore, we do not agree to the submission made by Ld. AR that once re-assessment is done, the penalty proceeding initiated *qua* original

assessment becomes void. The very same reasoning, as being contested by Ld. AR, has been adopted by Ld. CIT(A) for deleting the penalty but we do not subscribe to same. Being so, we are inclined to set aside the order of CIT(A). However, we find that the CIT(A) has made a limited adjudication on technical aspect, which also we have set aside, and did not make any adjudication on merits. Therefore, we are remanding this matter back to the file of CIT(A) for a proper adjudication on merit. While doing so, the CIT(A) shall also consider and adjudicate the objections raised by assessee in Cross-Objection.

6. Resultantly, the revenue's appeal is allowed and assessee's cross-objection is allowed for statistical purposes.

Order pronounced in open court on 22.03.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/ Dated : 22.03.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore