

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

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No.468/Bang/2024
AssessmentYear:2009-10

BBR (India) Pvt. Ltd. No.318, 15 th Cross 6 th Main, Sadashivanagar Bangalore 560 080 PAN NO : AAACB7375G	Vs.	DCIT Circle-1(1)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Sandeep Chalapathy, A.R.
Respondent by	:	Sri Subramanian S., D.R.

Date of Hearing	:	01.05.2024
Date of Pronouncement	:	06.05.2024

O R D E R

PERSOUNDARARAJAN K., JUDICIAL MEMBER:

This is an appeal filed against the order of NFAC, Delhi dated 27.01.2024 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the assessment year 2009-10.

2. Brief facts of the case are that originally, the assessment was made under section 143(3) of the Act against which the assessee filed an appeal before the ld. CIT(A), which was dismissed by the ld. CIT(A), against which a further appeal was filed before this Tribunal and this Tribunal was pleased to set aside the order of ld. CIT(A) and allowed one part of the addition and remitted the another part of addition to the file of ld. AO for deciding afresh based on the records submitted before the ld. CIT(A) and Tribunal. Thereafter the assessment was made on 29.9.2021 in which the remitted addition has been confirmed by the ld. AO since the assessee has not responded to the various notices. In the meanwhile, the ld. AO

had issued a show cause notice for imposing penalty u/s 271(1)(c) of the Act for which the assessee filed a reply by enclosing the Tribunal's order and requested to drop the penalty proceedings. At that point of time, assessee had not filed any appeal against the quantum order dated 29.9.2021. Therefore, the ld. AO had confirmed the levy of penalty u/s 271(1)(c) r.w.s. 274 of the Act by an order dated 11.1.2022. Thereafter, the assessee preferred an appeal before the NFAC on 14.2.2022 against quantum order dated 29.9.2021 and the same is still pending for consideration.

2.1 Subsequently the assessee filed an appeal before the NFAC challenging the penalty order dated 11.1.2022. The CIT(A) fixed the date of hearing for the penalty appeal on 18.01.2024. Immediately the assessee filed a letter on 18.1.2024 with the ld. CIT(A) enclosing quantum appeal papers and the written submissions and other annexures, informing that the quantum appeal is pending for consideration and therefore, requested the ld. CIT(A) to take both the appeals for hearing together or keep the penalty appeal pending till the disposal of the quantum appeal. The assessee filed the letter and the enclosures through the portal of the department and the same has been acknowledged by the department. While the facts being so, the NFAC without considering the letter and other documents filed on 18.1.2024, decided the appeal ex-parte and considered the penalty issue on merits and confirmed levy of penalty by his order dated 27.1.2024. The assessee now prefers this appeal against the above order of NFAC.

3. The Learned AR for the assessee reiterated the submissions made before the NFAC) and submitted that the quantum appeal is pending before the NFAC for adjudication and during the course of penalty proceedings it was brought to the notice of the NFAC. However it ignored and passed the penalty appeal order and,

therefore, requested that the matter may be sent back to NFAC for adjudication along with the quantum appeal.

4. The Learned DR relied on the orders of the lower authorities and prayed to dismiss the appeal.

5. We have heard the rival submissions and perused the materials available on record. As seen from the paper book filed by the assessee, a letter along with quantum appeal papers were filed on 18.01.2024, with a request to take both the appeals for hearing before NFAC or keep the penalty appeal pending till the disposal of the quantum appeal. The NFAC without considering the letter and its enclosures had dismissed the appeal on merits and confirmed the penalty levied by the AO. In our opinion, the order of the NFAC is not correct since the assessee demonstrated before us that they have uploaded the letter along with quantum appeal papers and made a request to hear both the quantum as well as penalty appeals together or defer the penalty appeal hearing till the quantum appeal has been decided.

5.1 We find that the argument made by the Learned AR is reasonable and without deciding the quantum appeal, deciding the penalty appeal, that too ex-parte on merits, does not seem to be correct. The NFAC might have considered the request of the assessee and they could have taken up both the appeals together or atleast they could have deferred the penalty appeal till the quantum appeal has been decided by one way or other which the NFAC failed to do so. We perused the quantum appeal e-Filing acknowledgement number 187278490140222 and find that the quantum appeal has not yet been posted for hearing and in fact no appeal number has been assigned till date. We are satisfied with the arguments of Learned AR and We set aside the penalty appeal

order dated 27.01 2024 of the NFAC and remitted the same to the file of NFAC with a direction to decide both quantum as well as penalty appeals simultaneously in accordance with law after giving an opportunity of being heard to the assessee The assessee is directed to produce the necessary documents for substantiating its case and to avoid unnecessary adjournments for early disposal of the case and update the email, mobile No. and address for communication.

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

Order pronounced in the open court on 6th May, 2024

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(Soundararajan K.)
Judicial Member

Bangalore,
Dated 6th May, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.