

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.99/PUN/2024
निर्धारण वर्ष / Assessment Year: 2016-17

Sunil Ramchandra Naware, Row House No.6, Amrut Pushpa, Ambad Link Road, Uttam Nagar- 422010. PAN : AAPPN5706R	Vs.	ITO, Nashik.
Appellant		Respondent

Assessee by : None
Revenue by : Shri Sourabh Nayak
Date of hearing : 29.04.2024
Date of pronouncement : 20.05.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 23.11.2022 passed by LD CIT(A)/NFAC, Delhi for the assessment year 2016-17.

2. The appellant has raised the following grounds of appeal :-

"1. The learned CIT is not justified in levying penalty u/s 271(1)(c) of Rs. 202118/- on the ground that the assessee had under reported his income by Rs. 4,34,830/- in consequence of misreporting without appreciating that the said levy of penalty was not justified in law.

2. The learned CIT failed to appreciate that before the A.O., the assessee had duly explained that under reporting of income in his case

was attributable to wrong action of tax consultant and all the material facts relating thereto along with substantiating evidences in form of complaint filed against Tax Consultant before Economic Wing of Police Department etc. were also furnished by the assessee and therefore, the levy of penalty u/s 271(1)(c) without rebutting the explanation offered by the assessee was not justified in view of provisions of the said Act.

3. The learned CIT ought to have appreciated that the bona fides of the explanation offered by assessee were established from the fact that the assessee, being salaried employee from technical background, was totally dependent upon the tax consultant for filing income tax return and no such incorrect claim was ever made by the assessee either in past years or in subsequent years and therefore, the levy of penalty u/s 271(1)(c) was not justified in view of the explanation offered by the assessee.”

3. The facts, in brief, are that the assessee is an individual filed return of income for the assessment year 2016-17 on 01.06.2016 declaring total income of Rs.6,08,560/- after claiming refund of Rs.22,530/-. Subsequently, the assessee revised his return of income u/s 139(5) of the IT Act on 28.03.2018 & claimed refund of Rs.66,420/-. Later the Assessing Officer, on the basis of information received from the Income Tax Officer, (Investigation) Nashik, that the assessee has claimed excess deductions, initiated proceeding u/s 147 of the IT Act after obtaining approval from the authorities & accordingly, a notice u/s 148 was issued. The assessee furnished return of income in response to notice u/s 148 of the IT Act, declaring income of Rs.7,17,920/-. The assessment was completed u/s 147 r.w.s. 144 of the IT Act on 22.09.2021 by

determining the income at Rs.7,17,920/- as against the income of Rs.3,11,010/- admitted in revised return. Subsequently, vide order dated 30-12-2021 the Assessing Officer imposed penalty of Rs.66,930/- u/s 271(1)(c) of the IT Act for concealing the particulars of income of Rs.4,06,910/-.

4. Being aggrieved by the above penalty order dated 31.12.2021, an appeal was preferred before ld. CIT(A)/NFAC. Since the assessee could not appear in the video conferencing, the penalty of Rs.66,930/- imposed u/s 271(1)(c) was confirmed by LD CIT(A)/NFAC, consequently the assessee is in appeal before this Tribunal.

5. When the present appeal was called for hearing, None appeared on behalf of the assessee, neither any application for adjournment was filed. Therefore, we proceed to decide the appeal on the basis of material available on record & after hearing LD DR.

6. LD DR submitted before us that the appellant has not filed appeal against the quantum addition & therefore the appellant has accepted the assessment made u/s 143(3)/147 of the IT Act. The appellant also did not appear in the Video Conferencing, granted by LD CIT(A)/NFAC on the demand of the appellant, which

resulted in dismissal of appeal by LD CIT(A)/NFAC. It was therefore requested by LD DR to confirm the penalty order passed by AO & sustained by LD CIT(A)/NFAC.

7. We have heard LD DR & perused the material available on record. We find that the AO has levied penalty u/s 271(1)(c) of the IT Act of Rs.66,930/- on the basis of quantum addition. It is also found that when the notice u/s 148 was issued the appellant has disclosed his correct income & paid the due tax along with the return. We also find that the AO has accepted the return as it is which was furnished by the appellant in response to the notice u/s 148 of the IT Act. It is also on record that the appellant himself sought Video Conferencing from LD CIT(A)/NFAC, but it appears that due to certain reasons the appellant could not appear before LD CIT(A)/NFAC. We cannot accept the contention of LD DR that the appeal has not been filed by the appellant against quantum addition therefore the penalty u/s 271(1)(c) is inevitable. Considering the grounds of appeal & in the interest of justice, we deem it proper to provide one more opportunity to the appellant to submit his explanations before LD CIT(A)/NFAC. We therefore set-a-side the order passed by LD CIT(A)/NFAC & restore the matter back to the file of LD CIT(A)/NFAC to decide the issue of

penalty u/s 271(1)(c) of the IT Act afresh as per facts & Law after providing reasonable opportunity of being heard to the assessee, so that he can submit his explanations before LD CIT(A)/NFAC. The assessee is also directed to respond on the appointed date before LD CIT(A)/NFAC without asking for any adjournment under any pretext, otherwise LD CIT(A)/NFAC is free to pass any order as per law. We hold & direct accordingly. The grounds raised in the appeal of the assessee are allowed.

8. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 20th May, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 20th May, 2024.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.