

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : D : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.386/Del/2023
Assessment Year: 2018-19

Baker Bughes Energy Services LLC,
C/o 19th Floor, DLF Square Building,
DLF Phase -2,
Gurgaon – 122 002,
Haryana.

Vs DCIT,
Int. Taxation Cir.1(1)(2),
New Delhi.

PAN: AAGCG4100N

(Appellant)

(Respondent)

Assessee by	:	Ms Soumya Singh, Advocate
Revenue by	:	Shri Vizay B. Vasanta, CIT-DR
Date of Hearing	:	16.04.2024
Date of Pronouncement	:	30.05.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal arises out of the penalty order dated 30.05.2022 passed by the DCIT, Circle Int. Taxation1(1)(2), New Delhi (hereinafter referred to as the Ld. AO) u/s 270A of the Income Tax Act, 1961 (hereinafter referred as 'the Act')

for the assessment year 2018-19 which has been sustained by the CIT(A), Delhi-42, by order dated 27.12.2022.

2. On hearing the ld. representatives, it comes on facts that the assessee's return for the relevant assessment year was selected for scrutiny and the AO had examined the discrepancy in the income as reflecting in Form 26AS exceeding the income shown in the return of income. The assessee had earned income during the year for rendering technical services and for supply of software. The AO concluded that the assessee has failed to justify the difference of receipt as reported in ITR and as reflected in Form 26AS and considering the same to be fees for technical services provided to Indian companies, made addition and also in the assessment order dated 22.11.2021 observed that as the assessee has under reported its income which is in consequence of misreporting thereof, it is a fit case for initiating penalty proceedings u/s 270A of the Act. Accordingly, show-cause notice was issued on 12.05.2022 and the impugned penalty order dated 30.05.2022 was passed. As it was challenged before the CIT(A), it was sustained.

3. The ld. AR has stressed on the fact that the difference of receipts relates to some other entity and the Director had inadvertently deducted the tax against appellant's PAN. It was submitted that as the appellant did not want to enter into litigation, it had decided not to contest the additions on merits.

4. The Id. AR also established before us, while explaining the discrepancy, that submissions were filed before the AO and the copy of the same is made available at pages 1-3 of the paper book. Further, from pages 17-25, the detailed reply to the penalty notice u/s 270A of the Act was also submitted, but, the AO has not taken cognizance of the same.

5. We find substance in this argument as assessment order and penalty order are both silent on these submissions and, at the same time, make specific mention that no submissions were made. The Id. AR has also argued on the fact that the penalty notice is not a valid notice as there is no specific allegation of the fact of which misrepresentation was made or the fact which was suppressed for the purpose of specific limb of section 270A(9) of the Act. We are of considered view that this alone is sufficient to set aside the penalty.

6. However, during hearing it also transpired that in fact, subsequently the Form 26AS stands rectified and the alleged discrepancy no more exists on record. As findings in the assessment cannot be regarded as conclusive for the purpose of the penalty proceedings and before a penalty can be passed or sustained entirety of the circumstances must be taken into account for which we rely Hon'ble Supreme Court judgment in case of *Anantharam Veerasinghaniah & Co. v. CIT, AP 123ITR Page 457 (SC)*. So taking notice of

the explanation submitted along with subsequent developments of rectification of Form 26AS, we are inclined to allow the grounds.

7. In the result, the appeal filed by the assessee is allowed and impugned penalty order is quashed.

Order pronounced in the open court on 30.05.2024.

Sd/-

Sd/-

(G.S. PANNU)
VICE PRESIDENT

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 30th May, 2024.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi