

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.666/Mum./2024
(Assessment Year : 2010-11)

Sandaw Prints Pvt. Ltd

87, Janma Bhoomi Marg,
Fort, Mumbai-400001
PAN – AALCS9866N

..... Appellant

v/s

Income Tax Officer,

Ward - 1(3)(1)

Aayakar Bhawan,
Mumbai-400021

..... Respondent

Assessee by : Ms Sruti Kalyanikar
Revenue by : Shri Ashok Kumar Ambastha

Date of Hearing – 21/05/2024

Date of Order –03/06/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 23/01/2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], which in turn arose from the penalty order passed under section 271(1)(c) of the Act, for the assessment year 2010-11.

2. In its appeal, the assessee has raised the following grounds:-

"1. THE ORDER BAD ILLEGAL AND WITHOUT JURISDICTION

1.1 *In the facts and the circumstances of the case, and in law, the appellate order framed by the National Faceless Appeal Centre [‘Ld. CIT (A)’] be held as bad and illegal, as the same is framed in breach of the statutory provisions and the scheme and as otherwise also is not in accordance with law.*

1.2 *Without prejudice to the generality of the above, the appellate order so passed is bad, illegal and void as the same is utterly arbitrary and perverse.*

2. NATURAL JUSTICE

2.1 *It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:*

(i) The same is framed in breach of the principles of Natural Justice; and

(ii) The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.

2.2 *Without prejudice to the generality of the above, in the facts and the circumstances of the case, and in law, the Ld. CIT (A) erred in not granting proper, effective and fair opportunity of being heard while passing the appellate order.*

2.3 *It is submitted that, in the facts and the circumstances of the case, and in law, the order be held as bad in law.*

WITHOUT FURTHER PREJUDICE TO THE ABOVE

3. INITIATION AND COMPLETION OF PENALTY PROCEEDING BAD IN LAW AND ILLEGAL

3.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in levying penalty u/s. 271 (1) (c) of the Income – tax Act, 1961 [“the Act”].*

3.2 *The Ld. CIT (A) failed to appreciate that the order passed by the A.O. and / or the penalty levied was bad and illegal as the necessary conditions for initiating the penalty proceedings and the completion thereof were not fulfilled.*

3.3 *The Ld. CIT (A) failed to appreciate that the penalty levied was bad and illegal as the no satisfaction was recorded by the A.O. with respect to the exact charge for initiating the penalty proceeding.*

3.4 *It is submitted that in the facts and the circumstances of the case, and in law, no such penalty was leviable.*

WITHOUT FURTHER PREJUDICE TO THE ABOVE

4 LEVY OF PENALTY OF RS. 16,58,160/- ON DISALLOWANCES MADE ON ESTIMATION BASIS

4.1 The Ld. CIT (A) erred in confirming the action of the A.O. in levying penalty of Rs. 16,58,160/- u/s. 271 (1) (c) of the Act on the allegation of concealment of income and furnishing of inaccurate particulars of income by the Appellant.

4.2 While doing so, the Ld. CIT (A) failed to appreciate that the penalty cannot be levied as -

(i) The additions / disallowance were made by the A.O. in the assessment order on; estimation basis only on the basis-of allegation of suspicious purchases; and

(ii) The addition / disallowance confirmed by the I.T.A.T. is challenged before the Hon'ble High Court and has not reached finality as the same is pending for admission;

4.3 It is submitted that in the facts and the circumstances of the case, and in law, even on merits, no such penalty was leviable."

3. The brief facts of the case are that for the year under consideration, the assessee filed its return of income on 29/09/2010 declaring a total income of Rs.9,52,180. The return filed by the assessee was processed under section 143(1) of the Act. Thereafter, on the basis of the information received from DGIT (Investigation) in respect of bogus sales/purchases, proceedings under section 147 of the Act were initiated in the case of the assessee. Vide order dated 27/03/2014 passed under section 143(3) read with section 147 of the Act, the total income of the assessee was assessed at Rs.2,28,53,090 after making the addition on account of alleged bogus purchases of Rs.2,14,64,868 made by the assessee. In further appeal, the learned CIT(A) restricted the addition to 12.5% of the bogus purchases and partly allowed the appeal filed by the assessee. In further appellate proceedings, the Tribunal vide order dated 13/02/2019 passed in the cross-appeal by the assessee and Revenue, restricted the addition to 25% of the transaction amount. Meanwhile, penalty proceedings under section 271(1)(c) of the Act were initiated separately. After considering the submissions of the assessee and the aforesaid order passed by

the Tribunal, the AO vide order dated 23/08/2019 passed under section 271(1)(c) of the Act levied a penalty of Rs.16,58,160.

4. In the appeal before the learned CIT(A), the assessee challenged the levy of penalty by the AO under section 271(1)(c) of the Act. However, the assessee failed to respond to various notices issued by the learned CIT(A) and also did not attend the facility of video conferencing provided by the learned CIT(A). Accordingly, the learned CIT(A) dismissed the appeal filed by the assessee, vide *ex-parte* order, in the absence of any material contrary to the findings of the AO. Being aggrieved, the assessee is in appeal before us.

5. We have considered the rival submissions and perused the material available on record. It is evident that the learned CIT(A) has passed the order *ex-parte* due to the non-appearance of/on behalf of the assessee. During the hearing, the learned AR could not furnish any justifiable reason for non-appearance before the learned CIT(A). Now in appeal before us, the assessee is duly represented by the learned AR and wishes to pursue the litigation against the penalty levied by the AO. The learned AR also undertook that the assessee will file all the details in support of its claim before the learned CIT(A) if the matter is restored for consideration afresh. In view of the above, we are of the considered opinion that in the larger interest of justice, the assessee be hereby granted one more opportunity to represent its case on merits before the learned CIT(A). Consequently, we deem it fit and proper to restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits after consideration of all the details/submissions as may be filed by the assessee. Needless to mention no order shall be passed without affording

reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 03/06/2024

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 03/06/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

True Copy

By Order

Assistant Registrar
ITAT, Mumbai