

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.340/Nag./2023
(Assessment Year : 2017-18)

Anand Shaktikumar Sancheti
10, Hindustan Colony, Bharat Nagar
Amravati Road, Nagpur 440 010
PAN – ABJPS0675H

..... Appellant

v/s

Income Tax Officer
Ward-1(3), Nagpur

..... Respondent

Assessee by : Shri Mukesh Agrawal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 14/05/2024

Date of Order – 14/05/2024

ORDER

PER V. DURGA RAO, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 29/08/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2017-18.

2. The assessee has raised following grounds of appeal:-

“1. On the facts and circumstances of the case and in law, the learned CIT Appeals, NFAC, Delhi has grossly erred in confirming levy of penalty u/s 270A of the I.T. Act, 1961 which is illegal, invalid and against the principles of natural justice.

2. On the facts and circumstances of the case and in law, the learned CIT Appeals, NFAC, Delhi ought to have seen that the appellant has filed a valid revised return u/s 139(5) of the Act and assessment has been completed on

income as shown in the revised return. As such the levy of penalty is unjustified, illegal and deserves to be deleted.

3. The Appellant craves leave to add, amend, alter, vary and / or withdraw any or all the above grounds of Appeal."

3. Facts in Brief:- The assessee filed his return of income electronically on disclosing total income at ₹ 91,89,490. The case was selected for limited scrutiny under CASS for the reason that the assessee claimed deduction against income from other sources and dividend income. Notice under section 142(1) of the Income Tax Act, 1961 ("*the Act*") was issued and served upon the assessee. The assessee filed all the details in response to the notice under section 142(1) of the Act i.e., copy of income tax return, computation sheet, bank account statement, dividend certificate confirmation, etc. The Assessing Officer, after perusal of all the details, noted that the assessee has received dividend income of ₹ 59,69,142, and has claimed it as exempt while filing the original return of income on 28/10/2017. As per the provisions of section 115BBDA of the Act, income in aggregate exceeding ₹ 10 lakh, by way of dividend declared and distributed or paid by a domestic company or companies shall be taxable @ 10%. The assessee revised his return of income after receipt of the notice under section 143(2) of the Act (which was served on 22/09/2018 and income was shown at ₹ 14160400, after including dividend income of ₹ 49,69,142 [₹ 59,69,142 (-) ₹ 10,00,000]. Accordingly, the Assessing Officer completed the assessment and has also initiated penalty proceedings under section 270A of the Act.

4. The Assessing Officer, during the penalty proceedings, by stating that it is a bona fide claim of the assessee that its income is exempt. It is also a case

of the assessee that in earlier years, upto the assessment year 2016-17, the assessee was entitled to make the claim. Therefore, the assessee has submitted that once a notice dated 14/08/2018, was received under section 143(2) of the Act, the assessee has filed a revised return of income on 22/09/2018, withdrawing his claim as dividend income. Therefore, he submitted before the Assessing Officer that it is a bona fide mistake. The Assessing Officer did not accept his claim and simply rejected it.

5. The learned CIT(A) also confirmed the Assessing Officer order.

6. We have heard the rival arguments, gone through the facts of the case and averments of the assessee made before the Assessing Officer during penalty proceedings as well as the submissions made by the assessee before the learned CIT(A). We find that it is a bona fide claim of the assessee that the entire amount of dividend income received by him is exempt. The assessee once received notice under section 143(2) of the Act, the assessee immediately filed revised return of income and withdrew his claim. Accordingly the assessment order was passed. Before the assessment order is passed the assessee had filed his revised return of income. When the Assessing Officer has passed the assessment order, the revised return of income was already available with the Assessing Officer. Not only that, the assessee had made such claim in the preceding years also. Under these facts and circumstances of the case, we are of the opinion that the claim of the assessee is a bona fide claim and the learned CIT(A) without considering the facts properly has confirmed the order passed by the Assessing Officer and hence, the order passed by the learned CIT(A) is liable to be reversed.

Consequently, we set aside the impugned order passed by the learned CIT(A) by allowing all the grounds raised by the assessee in this appeal.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 14/05/2024

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 14/05/2024

Copy of the order forwarded to:

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

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur