

IN THE INCOME TAX APPELLATE TRIBUNAL ‘F’ BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No. 4642/Mum/2023
(Assessment Year: 2010-11)

Vijakumar Shrikant Ghatge Niramay, Matoshri Nagar, Tidke Colony, Nashik Training School, Nashik-422 007	Vs.	Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC) North Block, Delhi-110 001
PAN/GIR No. AHCPG 1082 D		
(Assessee)	:	(Respondent)
Assessee by	:	None
Respondent by	:	Ms. Rajeshwari Menon
Date of Hearing	:	06.05.2024
Date of Pronouncement	:	21.06.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the *ex parte* order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2010-11.

2. The assessee has filed written submission dated 05.05.2024 and based on the same we hereby dispose off the case by hearing the learned Departmental Representative ('Id.DR' for short) and by perusing the materials available on record.

3. The brief facts are that the assessee is an individual and is said to have been filed his return of income regularly with PAN No. AHCPG1082D. The assessee has challenged the order of the Id. CIT(A) passed u/s. 250 of the Act where the penalty u/s.

271(1)(c) of the Act was levied by the Id. Assessing Officer ('A.O.' for short) and confirmed by the Id. CIT(A) vide order dated 18.10.2023.

4. The assessee aggrieved by the order of the Id. CIT(A) has filed this present appeal before us.

5. We have heard the learned Departmental Representative ('Id.DR' for short) and perused the materials available on record. It is observed from the written submission that the contention of the assessee is that there has neither been any assessment order nor a penalty order for the impugned order in the name of the assessee. The assessee being surprised by the penalty order is said to have approached the Id. A.O., i.e., DCIT-1(2) for clarifying as to what was the basis for the impugned penalty order. It is further observed that the impugned penalty order arises out of the assessment order dated 30.12.2017 and the order u/s. 271(1)(c) of the Act dated 29.06.2018 in the name of M/s. Nagjee Memorial Hospital and Research Centre Pvt. Ltd. bearing PAN No. AAAN9300R in which the assessee is said to be one of the director. The assessee further contends that the assessee is an individual and M/s. Nagjee Memorial Hospital and Research Centre Pvt. Ltd. is a company which are two different legal entities holding different PAN. It was further submitted that the original assessment order and the penalty order was in the name of the company and not the assessee. The assessee alleged that there was mistake apparent from the record of the original penalty order which was passed in the wrong name. The assessee prayed that the penalty order be quashed on this ground of illegality.

6. The learned Departmental Representative ('Id.DR' for short) had nothing to controvert the facts of the case, but rather raised an argument that the assessee was non

compliant before the Id. CIT(A) inspite of several notices. The Id. DR relied on the order of the Id. CIT(A).

7. In the above factual matrix of the case, it is observed that the assessment order dated 30.12.2017 passed u/s. 144 r.ws. 147 of the Act in the name of M/s. Nagjee Memorial Hospital and Research Centre Pvt. Ltd. bearing PAN: AAACN9300R and the penalty order dated 29.06.2018 bearing PAN : AAAN9300R were passed in the name of the company namely M/s. Nagjee Memorial Hospital and Research Centre Pvt. Ltd. now known as Lifeline Hospital and Medical Research Centre (India) Pvt. Ltd. where penalty amounting to Rs.12,65,157/- was levied for concealment of income amounting to Rs.40,94,361/-.

8. The Id. CIT(A) had then passed the *ex parte* order in the name of the present assessee, confirming the penalty levied by the Id. A.O. for the reason that the assessee has been non compliant throughout the appellate proceeding. On considering the rival contentions, it is observed that the Id. CIT(A) has not decided the issue on the merits of the case and it does not emanate from the order of the Id. CIT(A) whether or not the assessee has raised before the first appellate authority the issue of passing of the order in the name of wrong person. We, therefore, are inclined to remit this issue back to the file of the Id. CIT(A) providing the assessee one more opportunity to present his case before the first appellate authority and to raise all the relevant issues required for proper adjudication. Hence, we direct the Id. CIT(A) to decide the issue on the merits of the case and the assessee to co-operate in the appellate proceeding.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21.06.22024

Sd/-

(B R Baskaran)
Accountant Member

Mumbai; Dated : 21.06.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai