

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE “A” BENCH, BANGALORE**

**Before Shri Chandra Poojari, Accountant Member
and
Shri Prakash Chand Yadav, Judicial Member**

ITA No. 567/Bang/2024 (Assessment Year: 2014-15)		
Uttamchand Hastimal Jain Prop. Of Sumatinath Traders Kirana Bazar Vijayapura 586101 PAN – ADDPJ2783P (Appellant)	vs.	The Income Tax Officer Ward - 1 & 2 (TPS) Aayakar Bhavan Near All India Raido Athani Road, Vijayapura 586104 (Respondent)
Assessee by:	Shri Prasanna N. Urala, Advocate	
Revenue by:	Ms. Neha Sahay, JCIT-DR	
Date of hearing:	24.06.2024	
Date of pronouncement:	25.06.2024	

ORDER

Per: Prakash Chand Yadav, J.M.

This appeal filed by the assessee challenges the DIN & order No. ITBA/NFAC/S/2003-24/1061137028(1) of the National Faceless Appeal Centre, Delhi (CIT(A)) dated 19.02.2024 passed under Section 250 of the Income Tax Act, 1961 (the Act) in respect of Assessment Year (AY) 2014-05.

2. Facts leading to the filing of present appeal are, the assessee is an individual running a kirana shop in Vijayapura, Karnataka. For the impugned assessment year he has filed his return of income(ROI) declaring an income of Rs 4,72,780/- on 31.10.2014. Thereafter, an information, revealing that assessee had deposited an amount of Rs. 3,10,13,708/- in its bank account with Shri Gurubasava Urban Credit Souharda Co-op. Ltd, surfaced with department. Accordingly the case of the assessee was reopened under Section

148 of the vide notice dated 31.03.2021. In response to the 148 notice the assessee filed a revised computation of income declaring an income of Rs 21,68,535/-. While concluding the assessment the AO accepted the revised computation without any demur. However, the AO simultaneously, initiated penalty proceedings under Section 271(1)(c) of the Act alleging that assessee has concealed his income. Afterwards, the AO vide its order dated 26.09.2022, levied penalty u/s 271(1)(c) of the Act.

3. Aggrieved with the order of the AO the assessee filed appeal before the Ld CIT(A) and contended that no penalty under Section 271(1)(c) is leviable as the AO has ultimately accepted the revised computation filed by assessee. Counsel of the assessee further pointed out that the additional income has been offered for taxation purely on estimate basis, and hence penalty under Section 271(1)(c) is not leviable. However, the learned CIT(A) could not find force in the arguments of the assessee and confirmed the order of the AO.

4. Aggrieved with the order of the CIT (A) the assessee preferred present appeal and reiterated the submissions made before the lower authorities.

5. The learned D.R. contended that, had the case of the assessee would not have been reopened, the assessee could not have disclosed the additional income and hence it is a clear cut case for concealment of income and hence penalty levied is justifiable.

6. After considering the rival submissions, we observe that admittedly in this case the revised computation filed by the assessee has been accepted by the AO. This fact is very crucial for seeing the justification of the levy of penalty.

7. Before proceedings further we deem it appropriate to dwell upon the provisions of explanation-1 appended to section 271(1)(c). Explanation-1, has two clause (A) and (B). Clause A has following ingredients.

- a. If the explanation offered by an assessee found to be false by the AO of the CIT(A) or PCIT as the case may be penalty is leviable.

8. The case of the assessee is not covered under clause (A) as the computation filed by the assessee has been accepted by the AO therefore clause A is not applicable.

9. Now so far as the applicability of clause B is concerned. Let us examine the ingredients of Clause B. Clause B has following ingredients

- (i) assessee offers explanation which he is not able to substantiate; **and**
(ii) he fails to prove that such explanation is bona fide; and all the facts relating to the same have been disclosed by him.

10. Perusal of the above would show that the legislature has used “and”. It is worthy to note that various Benches of the High Court and ITAT have held that expression “and” is conjunctive and hence all the conditions mentioned in **clause B** should be satisfied cumulatively. Reference can be made to the decision of Coordinate Bench of the ITAT in the case of Pfizer Vs DCIT reported in 147 TTJ 0385(Bom):-wherein the cordinte Bench has observed as under:-

*“Third category consists of cases where the assessee offers explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same were disclosed by him. Here it is relevant to mention that the above bracketed portion of clause (B) of the Expl. was inserted en bloc by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986 w.e.f. 10.09.1986. **On reading of the clause (B) of the Expl. 1, it is clear that in order to encompass a case within its purview, the following two conditions must be satisfied:- (i) assessee offers explanation which he is not able to substantiate; and (ii) he fails to prove that such explanation is bona fide; and all the facts relating to the same have been disclosed by him.***

14. At this juncture it would be relevant to take note that conjunction "and" has been used by the legislature between these two essential conditions of clause (B) of Explanation (1) to section 271(1)(c). It shows that both the above referred conditions must be cumulatively satisfied so as to bring a case within the mischief of this clause. If only one condition is satisfied and the other is not, the penalty would not follow. In other words, if the person offers an explanation which he is not able to substantiate [being condition(i) above] but succeeds in proving that such explanation is bona fide and that all the material facts relating to the same were disclosed by him, [being condition (ii) above], the penalty would not be attracted.”

8. When we analyse the facts of the present case, in the light of the above provisions of explanation-1 clause B, and interpretation of the same made by the courts, then it is abundantly clear that in present case the assessee has fully disclosed the material facts in an open and *bonafide* manner, the assessee also able to substantiate his claim as evident that the no addition or alteration has been made by the AO to the revised computation. Therefore all the conditions mentioned in the deeming provisions of explanation-1 clause B are not fulfilled in this case and hence no penalty is leviable in the present case.

9. In view of the above the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 25th June, 2024.

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bengaluru, Dated: 25th June, 2024
n.p.

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2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
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By Order

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Assistant Registrar
ITAT, Bangalore