

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं /ITA No.507/Hyd/2024
(निर्धारण वर्ष/Assessment Year:2018-19)

M/s. SHR Infrastructure Pvt. Ltd., Hyderabad, Telangana. PAN: AAXCS3361A	Vs.	Dy. Commissioner of Income Tax, Circle 3(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारित द्वारा/Assessee by:	Shri S.K. Gupta, Advocate	
राजस्व द्वारा/Revenue by:	Smt. Sheetal Sarin, DR	
सुनवाई की तारीख/Date of hearing:	25/07/2024	
घोषणा की तारीख/Pronouncement:	26/07/2024	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M:

This appeal is filed by SHR Infrastructure Pvt. Ltd. ("the assessee"), feeling aggrieved by the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), dated 02.02.2024 for the A.Y. 2018-19.

2. The grounds raised by the assessee are as under :

" 1. The order passed by CIT(A) is not acceptable as it is against the facts of the case and provisions of Income Tax Act, 1961.

2. The ld. CIT(A) erred in non-deciding the appeal on merit.

3. The penalty levied u/s.270A(9)(c) is not sustainable as the A.O. made a summary disallowance of expenses @ 50% and is not covered under any of the sub-clauses of Section 270A(9).

4. *The case of the appellant squarely covered by provisions of Section 270A(9).*

5. *The Ld. CIT(A) failed to appreciate that the penalty is not leviable Section 270A(9) on the facts of the case.*

6. *The appellant prays before the Hon'ble Income Tax Appellate Tribunal that they may be permitted to add, to alter or to amend any grounds at the time of hearing."*

3. Brief facts of the case are that an addition of Rs.29,18,074/- was made by the Learned Assessing Officer ("Ld. AO") u/s.143(3) r.w.s. 143(3A) and 143(3B) of the Income Tax Act, 1961 ("the Act") for the A.Y. 2018-19 vide his order dt.12.04.2021. On the same addition of Rs.29,18,074/-, the Ld. AO levied the penalty of Rs.16,08,000/- u/s. 270A(9)(c) of the Act vide his order dated 07.01.2022.

4. Feeling aggrieved by the order passed by the Ld. AO, assessee filed appeal before the Ld. CIT(A). The assessee did not make any compliances to the notices issued by Ld. CIT(A). Hence, the Ld. CIT(A) dismissed the appeal of the assessee.

5. Feeling aggrieved with the order of Ld. CIT(A), the assessee is now in appeal before us, contending that the Ld. CIT(A) did not provide sufficient opportunity to the assessee for explaining that their case did not fall u/s. 270A(9)(c) of the Act. It is further contended that the Ld. CIT(A) has passed the order without providing proper opportunity. The Ld. AR further submitted that the assessee does not stand to gain by allowing the appeal to be disposed of without any

documentary evidence being produced and it is only due to the reasons beyond the control of the assessee, the assessee could not produce the documents explaining the reasons that their case did not fall u/s. 270A(9)(c) of the Act. By consolidating all the grounds, he further submitted that given an opportunity, the assessee is now ready to produce all such details and conduct the proceedings diligently and get the matter disposed of on merits.

6. Per contra, Ld. DR placed heavy reliance on the orders of the authorities below, and submitted that sufficient opportunity has already been given by the authorities, but the assessee failed to avail the same. He opposed the grant of further opportunity to the assessee.

7. We have heard the rival submissions and also gone through the record in the light of the submissions made on either side. It could be seen from the orders of the Ld. CIT(A) that the assessee failed to produce the explanation with regards to the levy of penalty u/s. 270A(9)(c) of the Act, which resulted in passing the orders without consideration thereof. It is a fact that the assessee does not stand to gain by not producing such documents/explanation. Be that as it may, now the assessee is ready to produce all such documentary evidence in support of his contentions and get the matter disposed of

on merits. The highest that would happen by allowing an opportunity to the assessee is that a cause would be decided on merits. With this view of the matter, we are of the view that fresh opportunity should be given to the assessee and, accordingly, we set aside the impugned order and restore the issue to the file of the Ld. CIT(A) for passing a fresh order on merits after affording the opportunity of hearing to the assessee. Grounds of appeal are answered accordingly.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 26th July, 2024.

Sd/-

(K. NARAIMHA CHARY)
JUDICIAL MEMBER

Hyderabad.

Dated: 26.07.2024.

* Reddy gp

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. M/s. SHR Infrastructure Pvt. Ltd., 310/A/A, Road No.12, MLA Colony, Banjara Hills, Hyderabad-500 034
2. DCIT, Circle-3(1), Hyderabad.
3. Pr. CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,