

IN THE INCOME TAX APPELLATE TRIBUNAL, "F" BENCH
MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIALMEMBER &
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 3390/MUM/2024
(A.Y.2013-14)

Vinod Mohanan, B/202, Plot No. 5, Anurag Residency, Sector-9, Opp Saksham Surer Mkt. Kamothe, Thane- 410208. Maharastra	Vs.	NFAC, Income Tax Department, NewDelhi-110001.
PAN/GIR No. AXGPM7296M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri Suresh Gudhar & Shri Rajesh B Jage.AR
Revenue by	Shri Krishna Kumar.Sr.DR

सुनवाई की तारीख/Date of Hearing	19.08.2024
घोषणा की तारीख/Date of Pronouncement	22.08.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/sec 271(1)(c) and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

- Ld. CIT(A) has erred in dismissing the appeal filed on 30.04.2024 stating that the quantum and penalty proceedings are separate, despite the submission that quantum appeal is pending. Without checking the proper facts of case, assigning proper reasons, justification and adjudication. The learned CIT Appeal dismissed the appeal. Where, in the quantum appeal,*

the addition was deleted vide CIT appeal order dated on 10.05.2024. There are various judicial pronouncement do confirm that no penalty us 271 1 (c) can be levied when the quantum addition is deleted.

2. Ld. CIT(A) has erred in dismissing the appeal filed on 30.04.2024 ignoring the ground taken by the appellant that the AO has levied penalty on incorrect facts i.e. although Form 35 was attached with the submission but the form 35 was not visible. It was technical matter but when the appellant had made genuine request to keep the penalty proceedings in abeyance. Therefore, the CIT appeal dismissing the appeal is gross injustice and without proper application and prejudiced mind.

3. The appellant craves leave to add, amend, alter, substitute, modify in any or all the above grounds of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing.

2. The brief facts of the case are that, the assessee is an individual and has not filed the return of income for the A.Y 2013-14. The Assessing Officer (A.O) has received the information that the assessee has purchased immovable property for Rs. 44,50,000/- and made cash deposits of Rs. 5,95,000/- in the bank account and has paid salary to employees u/sec 192A & u/sec 192B of the Act amounting to Rs. 3,12,020 & Rs.1,97,511/- in the F.Y 2012-13. The AO has reason to believe that the income has escaped assessment and issued notice u/sec148 of the Act. Incompliance to notice the assessee has submitted the details and subsequently there was no compliance. Whereas the AO has issued a show cause notice proposing the additions (i) the assessee could not substantiate the sources for the purchase of immovable property of Rs.44,50,000/-(ii) the assessee has not substantiated the sources of cash deposits in the bank

account aggregating to Rs.5,95,000/- and (iii) the assessee could not explain with supporting evidences in respect of salaries paid to employees of Rs.5.09.531/-. Subsequently, the assessee has filed the return of income on 28.03.2021 and the assessee has filed the details of acquisition of the property and in respect of cash deposits, the A.O has made addition of Rs. 6,58,000/- and assessed the total income of Rs. 6,58,000/- and passed the order u/sec 147 r.w.s 144B of the Act dated 16.09.2021.

3. Subsequently, the A.O. has initiated penalty proceedings u/sec 271(1)(c) of the Act and has levied penalty of Rs. 2,03,332/- vide order dated 03.01.2022.

4. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO but has confirmed the levy of penalty u/s 271(1)(c) of the Act and dismissed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing the Ld. AR submitted that the CIT(A) has erred in not considering the fact that the assessee has filed an appeal against the quantum addition and the same is pending. Whereas the CIT(A) has overlooked the facts and has confirmed the levy of penalty. Further the Ld. AR submitted that the CIT(A) in the

quantum appeal has deleted the addition made by the AO and allowed the assessee appeal and therefore the penalty levied by the A.O is not sustainable and the Ld.AR prayed for allowing the assessee appeal. Per Contra, the Ld. DR relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue envisaged by the Ld.AR that the CIT(A) has erred in confirming the levy of penalty u/sec 271(1)(c) of the Act even though the assessee has filed an appeal against the quantum addition made in the assessment order u/sec 147 r.w.s 144B of the Act dated 16.09.2021. The Ld. AR has demonstrated the copy of the appellate order dated 10.05.2024 deleting the addition made by the A.O. at Page 7 Para 4.3 to Para 6 of the order read as under:

“4.3 Brief facts noted in this case are that as per information available with the department, the assessee had purchased immovable property of Rs.44,50,000/- and made cash deposit of Rs.5,95,000/- into his bank account. After recording reasons, u/s 147 of the IT Act, notice u/s 148 of the IT Act was issued to the assessee on 19.03.2020 and served on the assessee electronically. Apart from this notice, various notices were issued to the assessee to furnish necessary documents and written submission. The AO specifically vide notices dated 01.01.2021, 07.01.2021, 17.08.2021, 24.03.2021, 02.07.2021 and 29.07.2021 asked the assessee to submit reply alongwith the supporting documents in respect of the source of cash deposited into the bank accounts maintained with the HDFC Bank. The assessee failed to submit any supporting documents. Finally, the AO issued showcause notice to the assessee in the form of draft assessment order vide which an opportunity was given to the assessee as to why proposed variation should not be made and the assessee be not completed as per the draft

assessment order on 01.09.2021. The assessee filed his submission on various issues raised by the AO in his showcause notice. However, in respect of unexplained cash deposit, the assessee did not offer any

documentary evidence and only argued that he had received a cash deposit of Rs.5,95,000/- as gift from wife of Rs. 150000/-, Rs.170000/- from his father, gift of Rs. 1,50,000/- from father in law and old saving of Rs. 1,25,000/-. However, no supporting documents were furnished by the assessee. The AO held that the assessee failed to satisfy the conditions as stipulated u/s 69A of the IT Act and accordingly, made an addition of Rs.6,58,000/- u/s 69A of the IT Act.

4.4 Considered the facts of the ground, material available on record, and contention of the appellant. It is seen that the appellant has attached certain documentary evidences which were not furnished by the appellant during the assessment proceedings. Since, these evidences were not furnished by the appellant during assessment proceedings, these tantamount to additional evidences. From the perusal of the appellants submission including dated 25/03/2024, and the circumstantial logics at the additional evidences are technical in nature and point to the root of the underlying appeal, the same are acceptable.

5. The appellant has made a very elaborate and passionate submission depicting the cash flow including cash gifts received from the family member as per definition of family in the Explanation to the s. 56 (2)(vi) of the Act, cash availed from the Gold Loan from Bank and his own savings. He has furnished sufficient explanation wrt his ground of appeal all of which have been adjudicated together. In finality in my view the addition of Rs. 6,58,000/- made by the AO deserves to be deleted.

6. In the result, appeal is allowed.”

7. We have considered the facts, circumstances and decision of the CIT(A) deleting the addition made by the A.O vide order dated 10-05-2024 as dealt in the above

paragraph. Therefore the penalty levied by the A.O and sustained by the CIT(A) in the order dated 30-04-2024 shall not survive. Accordingly, we set aside the order of the CIT(A) and direct the Assessing Officer to delete the penalty. And we allow the grounds of appeal in favour of the assessee.

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

Order pronounced in the open court on 22.08.2024

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated:22/08/2024

KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt.Registrar)ITAT,
Mumbai