

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.320/Ind/2024
(Assessment Year: 2006-2007)

Shri Basant Rao Shelke, 87, Shubhalaya Villa, E-8 Trilanga, Bhopal	Vs.	ACIT-1(1), Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AFOPS5987B		
Assessee by	Shri S.S. Deshpande , AR	
Revenue by	Shri Ashish Porwal, SR.DR	
Date of Hearing	28.08.2024	
Date of Pronouncement	29.08.2024	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 05.03.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC) Delhi arising from the penalty order passed u/s 271(1)(c) of the I.T. Act for the Assessment Year 2006-2007.

2. Assessee has raised following grounds of appeal:

"1. That on the facts and in the circumstances of the case, the learned CIT(A), NFAC, Delhi erred in passing the order u/s 250 of the Act without fixing the case for hearing and without giving the opportunity of being heard and thereby not following the instruction as given in Faceless Appeal Scheme, 2021 as per para-5(1)(b) of the Scheme and thus, the order passed is unjust, unfair, bad in law and against the principle of natural justice.

2 That on the facts and in the circumstances of the case, the learned CIT(A), NFAC, Delhi erred in confirming the penalty of Rs.1,00,000/- u/s 271(1)(c) of the Act without appreciating the facts that the addition of Rs.3,40,000/- which is the very basis for imposing the penalty of Rs.1,00,000/- was deleted by ITAT. Hence, the order passed by the CIT(A) NFAC is unjustified, unwarranted and not tenable in the eye of law.

3. That the appellant craves leave to add, to urge, to alter or to amend any of the ground of the appeal on or before the date of hearing."

3. At the time of hearing Ld. AR of the assessee has pointed out that in the quantum appeal this Tribunal vide order dated 25.09.2018 in IT(SS)A No.80/Ind/2016 has deleted the addition made by the A.O against which the penalty is levied u/s 271(1)(c) of the Act, thus he submitted that the penalty levied is not sustainable and liable to be deleted.

4. On the other hand Ld. Departmental Representative has not disputed the fact that the addition made by the A.O has been deleted by this Tribunal in the quantum appeal vide order dated 25.09.2018.

5. Having considered the rival submissions and careful perusal of the order passed u/s 271(1)(c) of the Act as well as the decision of this Tribunal dated 25.09.2018, we find that the A.O has levied the penalty in question against the addition of Rs.3,40,000/- on account of undisclosed investment in construction of house property. The said addition has been deleted by this Tribunal vide order dated 25.09.2018 in IT(SS)A No.80/Ind/2016 in para 5 as under:

"5. We have heard both the parties and perused the orders of lower authorities. We find that the inspector report is not reliable because in the said report, there are no references to the name and address of the neighbours, who were enquired about the source of income of the wife of the assessee and therefore, conjectures and surmises cannot take the shape of evidence. The assessee is regularly assessed to tax since long and all the investments are disclosed in the regular returns filed for respective years. During the course of search, no movable or immovable assets were found in the name of the assessee which are undisclosed. The Revenue had already accepted the returns of the wife of the assessee from the assessment year 2002-03 to 2005-06 and for assessment year 2005-06, her opening capital account was Rs.1,63,299/- and if in this opening capital, the income at Rs.96,347/- plus gift received from her father is added, she has available balance of Rs.3,59,546/- which proves that the assessee's wife had sufficient fund available with her to make investment in construction of house. Therefore, the addition in the hands of the assessee is not justified. Accordingly, we delete the addition of Rs.3,40,000/-. Thus, the appeal of the assessee for the assessment year 2006-07 is allowed."

6. Therefore when the addition itself is deleted by this Tribunal the penalty levied by the A.O against such addition would not survive and the same is deleted.

7. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 29.08.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 29.08.2024
Dev/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore