

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA Nos.403 & 404/Hyd/2022**
(निर्धारण वर्ष/Assessment Year: 2018-19)

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| Shri Shavva Sudheer Reddy Hyderabad PAN:AGKPR5747F (Appellant) | Vs. | Asstt. C. I. T. Central Circle 3(1) Hyderabad (Respondent) |
| निर्धारिती द्वारा/Assessee by: Advocate S Sandhya | | |
| राजस्व द्वारा/Revenue by: Shri Srinath Sadanala, DR | | |
| सुनवाई की तारीख/Date of hearing: 03/09/2024 | | |
| घोषणा की तारीख/Pronouncement: 03/09/2024 | | |

आदेश/ORDER

Per Manjunatha, G. A.M

These two appeals filed by the assessee are directed against the common order dated 29/07/2022 of the learned CIT (A)-11, Hyderabad and pertains to A.Y.2018-19 against the penalty order passed by the Assessing Officer. Since identical grounds are raised by the assessee in these two appeals, for the sake of convenience, these were heard together and are being disposed off by these common order .

2. The brief facts of the case are that the assessee filed his return of income for the A.Y 2018-19 on 27/10/2018 declaring total income of Rs.10,85,409/-. A search & seizure operation u/s 132 of the I.T. Act, 1961 was conducted in the case of Mytrah Energy Group on 30/08/2017 and in the said search operation, the assessee was also covered. During the course of search action, a sum of Rs.40.00 lakhs cash was seized from the residential premises of the assessee. The assessee was asked to explain the source for the cash found and in response to question No.16 of the Sworn Statement recorded u/s 132(4) of the I.T. Act, 1961, the assessee submitted that the cash is his accumulated savings, borrowings from friends and relatives. During the post search proceedings, the assessee vide letter dated 'nil' stated that the source of cash of Rs.40.00 lakhs found at his residence is out of sale of scrap to M/s. N Power Infrastructure and the same has been accounted in his books of account. The Assessing Officer did not accept the explanation furnished by the assessee and made addition towards cash seized u/s 69A r.w.s. 115BBE of the I.T. Act, 1961. Thereafter, the Assessing Officer initiated penalty proceedings u/s 271AAB and 271AAC of the I.T. Act, 1961 and after considering the relevant submissions of the assessee, levied penalty of Rs.24.00 lakhs u/s 271AAB and penalty of Rs.3,09,000 u/s 271AAC of the I.T. Act, 1961.

3. On appeal, the learned CIT (A) sustained the penalty levied by the Assessing Officer u/s 271AAB and 271AAC of the I.T. Act, 1961.

4. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

5. The learned Counsel for the assessee submitted that the appeal filed by the assessee against the additions made by the Assessing Officer towards cash found at the time of search u/s 69A r.w.s. 115BBE of the I.T. Act, 1961 is pending for adjudication before the learned CIT (A). Therefore, unless the quantum appeal filed by the assessee is decided, the appeal filed by the assessee against levy of penalty cannot be decided. Therefore, she submitted that the appeal may be set aside to the file of the learned CIT (A) to decide the issue after deciding the quantum appeal filed by the assessee.

6. The learned DR, on the other hand, supporting the orders of the authorities below submitted that the penalty proceedings are independent of assessment proceedings and same can be decided separately. The appellant could not explain the source for cash deposits found during the course of search and thus, the Assessing Officer has made addition u/s 69A of the I.T. Act, 1961. Once the addition is made u/s 69A, the penalty u/s 271AAB and 271AAC is automatic. The Assessing Officer after considering the relevant facts has rightly levied penalty and the learned CIT (A) has rightly sustained the penalty levied by the Assessing Officer. Therefore, the order of the learned CIT (A) should be upheld.

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7. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that during the course of search, Rs.40.00 lakhs of cash was found at the residential premises of the assessee. The Assessing Officer made addition towards cash found during the course of search as unexplained money u/s 69A of the I.T. Act, 1961. The appellant challenged the addition made by the Assessing Officer before the first appellate authority and the appeal filed by the assessee is pending for adjudication. Once the quantum appeal filed by the assessee is pending for adjudication, then in our considered view, the appeal filed by the assessee against the order passed by the Assessing Officer imposing penalty u/s 271AAB and 271AAC of the I.T. Act, 1961, needs to be decided either along with the quantum appeal filed by the assessee challenging the additions made by the Assessing Officer or after deciding the appeal filed by the assessee. Moreover, once the assessee challenges the assessment order passed by the Assessing Officer making certain additions, then the time limit for passing orders imposing penalty is extended as per the provisions of section 275 of the I.T. Act, 1961. Since the Assessing Officer is having sufficient time to complete the penalty proceedings, in our considered view, the Assessing Officer ought to have waited for the outcome of appeal filed by the assessee against the additions made in the assesment proceedings. Further, the learned CIT (A) having noticed the fact that the appellant has challenged the additions made by the Assessing Officer towards cash found during the course of search ought to have decided the quantum appeal first

and then decide the penalty appeals. Since the learned CIT (A) has decided the appeal filed by the assessee against the order passed by the Assessing Officer imposing penalty before deciding the quantum appeal, in our considered view, these two appeals filed by the assessee needs to go back to the file of the learned CIT (A). Thus, we set aside the order passed by the learned CIT (A) and restore the issue to the file of the learned CIT (A) for fresh adjudication. The learned CIT (A) is directed to hear these appeals along with quantum appeal filed by the assessee or after the outcome of appeal filed by the assessee against the additions made by the Assessing Officer towards cash deposits.

8. In the result, appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 3rd September, 2024.

Sd/-

Sd/-

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| (LALIET KUMAR) JUDICIAL MEMBER | (MANJUNATHA, G.) ACCOUNTANT MEMBER |
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Hyderabad, dated 3rd September, 2024

Vinodan/sps

Copy to:

| S.No | Addresses |
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| 2 | ACIT, Central Circle 3(1) Basheerbagh, Hyderabad 500029 |
| 3 | Pr. CIT – Central, Hyderabad |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order