

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 No. 848/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

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| Shri Mohd. Wajahat Ali Khan Hyderabad PAN:EAMPK7060N | Vs. | Income Tax Officer (International Taxation)-1 Hyderabad |
| (Appellant) | | (Respondent) |
| निर्धारिती द्वारा/Assessee by: | Shri P Murali Mohan Rao, CA | |
| राजस्व द्वारा/Revenue by: | Shri Srinath Sadanala, DR | |
| सुनवाई की तारीख/Date of hearing: | 28/10/2024 | |
| घोषणा की तारीख/Pronouncement: | 28/10/2024 | |

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the assessee is directed against the order dated 04/07/2024 of the learned CIT (A)-10, Hyderabad, relating to A.Y.2017-18.

2. Facts of the case, in brief, are that the assessee is a non-resident Indian for the A.Y 2017-18. The assessee is residing in USA for both the A.Ys under consideration and earning income

from outside India. The assessee has not earned any income in India and has not filed return of income for both the A.Ys. The assessment for both the A.Ys have been reopened u/s 147 of the I.T. Act, 1961 for the reasons stated as per which, the income chargeable to tax had been escaped the assessment on account of non-disclosure of consideration paid for purchase of property. Accordingly, notice u/s 148 of the I.T. Act, dated 30.03.2021 was issued and served on the assessee. According to the Assessing Officer, as per the information available with the Department, during the financial year relevant to A.Y 2016-17 and 2017-18, the assessee has purchased a property from M/s. Skill Promoters (P) Ltd and has paid consideration in cash. The assessee neither filed his return of income in response to notice u/s 148 of the Act, nor complied with the various notices issued u/s 142(1) of the Act. Therefore, the Assessing Officer passed the best judgment assessment order u/s 144 r.w.s. 147 of the I.T. Act, 1961 for both the A.Ys and made addition towards cash paid for purchase of property u/s 69A of the I.T. Act, 1961.

3. Thereafter, the Assessing Officer initiated penalty proceedings u/s 272A(1)(d) of the I.T. Act, 1961 for A.Y 2017-18 and has also initiated penalty proceedings u/s 271(1)(b) of the I.T. Act, 1961 for A.Y 2017-18. The Assessing Officer called upon the assessee to explain as to why the penalty shall not be levied for failure to furnish return of income for the A.Y 2017-18. The Assessing Officer had also called upon the assessee to explain as

to why the penalty should not be levied for the A.Y 2017-18 for failure to comply with the notices issued u/s 142(1) of the I.T. Act. In response, the assessee submitted that the provisions of section 272A(1)(d) of the Act is not applicable for both the A.Ys because being a non-resident, he does not require to file the return of income in case there is no taxable income in India. Since the assessee is a non-resident for both the A.Y and earning income from outside India, not filed return of income for both the A.Ys. Therefore, the provisions of section 272A(a)(d) of the I.T. Act, 1961 cannot be invoked. The assessee had also submitted that the penalty cannot be levied u/s 272A(1)(d) of the Act when the Assessing Officer has completed the assessment at later stage based on the information furnished by the assessee or information available with the Assessing Officer. The Assessing Officer however, was not satisfied with the explanation furnished by the assessee and according to the Assessing Officer, provisions of section 272A(1)(d) of the Act is applicable for non-filing of return of income for both the A.Ys, because the assessee has not filed return of income and further the assessment order was passed making addition of Rs.10,000/- and the objections filed by the assessee before the DRP has been dismissed and the order of the Assessing Officer has been confirmed. The Assessing Officer had also levied penalty u/s 272A(1)(d) of the Act on the ground that the assessee has failed to comply with the statutory notices issued u/s 142(1) of the I.T. Act, 1961.

4. Being aggrieved by the penalty order passed by the Assessing Officer u/s 272A(1)(d) of the I.T. Act, the assessee has preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee submitted that he had filed appeal before the Tribunal against the final assessment order passed by the Assessing Officer challenging the addition made towards purported cash payments made for purchase of a property. Further, when the appeal filed by the assessee is pending for adjudication, the Assessing Officer cannot levy penalty for failure to file return of income u/s 272A(1)(d) of the Act and also for failure to comply with the notices u/s 142(1) of the Act. The learned CIT (A) after considering the relevant submission of the assessee and also taken note of certain judicial precedents, rejected the submission of the assessee and upheld the penalty levied by the Assessing Officer u/s 272A(1)(d) of the I.T. Act, 1961 on the ground that the assessee could not explain non-compliance with the notices issued u/s 142(1) of the Act by the Assessing Officer and further on the ground that the addition made by the Assessing Officer has been confirmed by the learned CIT (A) and from the above it is clear that the appellant had income during the financial year relevant to A.Y 2017-18 but not filed the return of income u/s 139(1) of the Act. The assessee had also not filed any explanation for non-furnishing of return of income u/s 139(1) of the Act except stating that there was no income from India. Therefore, the learned CIT (A) has opined that there is no error committed by the Assessing Officer to levy

penalty u/s 272A(1)(d) of the Act for failure to furnish the return of income for both the A.Ys and also failure to comply with the statutory notices issued u/s 142(1) of the Act dated 20/12/2021 and thus, rejected the explanation of the assessee and dismissed the appeal filed for both the A.Ys.

5. Being aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee submitted that the assessee being a non-resident is not required to file his return of income u/s 139(1) in case he does not have any income taxable in India. Further, just because the addition made by the Assessing Officer is in excess of the basic exemption limit for filing the return of income, it does not mean that the assessee is having taxable income in India and he has to file his return of income. Since the appeal filed by the assessee against the additions made by the Assessing Officer for both the A.Ys is pending before the ITAT and the issue has not reached finality, whether the addition made by the Assessing Officer for both the A.Y is income of the assessee or not, the question of levy of penalty u/s 272A(1)(d) for non-furnishing of return of income for both the A.Ys does not arise. The learned Counsel for the assessee submitted that when the assessee is not required to file return of income, the question of filing necessary return of income does not arise. Further, when the Assessing Officer completed the assessment at later stage on

the basis of information furnished by the assessee or on the basis of information available with the Assessing Officer, then it cannot be said that the assessee has failed to comply with the notices which attracts penalty u/s 272A(1)(d) of the Act.

7. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that the assessee failed to furnish return of income for both the A.Ys on or before the due date prescribed u/s 139(1) of the Act. The assessee had also not offered any reasonable explanation for not filing the return of income. Therefore, the Assessing Officer has rightly invoked the provisions of section 272A(1)(d) of the Act and levied penalty for non-furnishing of return of income. As regards the levy of penalty u/s 271(1)(b), the learned DR submitted that it is a clear case of non-compliance of the statutory notices issued u/s 142(1) of the Act and for this failure, the provisions of section 272A(1)(d) is attracted. The Assessing Officer and the learned CIT (A) after considering the relevant facts has rightly levied penalty u/s 272A(1)(d) of the Act and their orders should be upheld.

8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We find an identical issue of levy of penalty u/s 271F of the Act when quantum appeal filed by the assessee is pending for disposal at first appellate authority is pending, whether the penalty proceedings cannot be completed or not has been

considered by us in ITA Nos.532 to 534/Hyd/2023, order dated 21/05/2024 and after considering the relevant facts, we set aside the issue to the file of the Assessing Officer with a direction to reconsider the issue of levy of penalty after the outcome of the appeal filed by the assessee before the first appellate authority. The relevant findings of the Tribunal are as under:

“8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. In so far as the levy of penalty u/s 271F of the I.T. Act, 1961 for A.Y 2016-17 and 2017-18 are concerned, we find that the assessee is a non-resident, residing in USA and earning income from outside India for both the A.Ys. If a non-resident does not have taxable income in India, then he does not require to file return of income in India. The argument of the Assessing Officer is that the additions made in the assessment for both the A.Y has been upheld by the DRP and from the above, it is clear that the assessee is having taxable income in India is devoid of merit, because the additions made in the assessment does not leads to a conclusion that it is the income of the assessee, unless it is settled or decided by the appellate authorities. In the present case, the assessee has filed appeal against the final assessment order passed by the Assessing Officer for both the A.Ys and challenged the addition before the ITAT. Unless the appellate authority decide the issue of addition made by the Assessing Officer, then it cannot be said that the assessee is having taxable income in India for both the A.Y and he is required to file his return of income. Therefore, in our considered opinion, the Assessing Officer is erred in concluding penalty proceedings u/s 271F of the I.T. Act for both the A.Ys.

9. As regard the penalty levied u/s 271(1)(b) of the I.T. Act for A.Y 2016-17, once again the addition made by the Assessing Officer towards cash deposits is under challenge before the ITAT. The assessee has requested the Assessing Officer and the learned CIT (A) to keep in abeyance of the penalty proceedings till such time, the appeal filed by the assessee is disposed of by the Tribunal. In our considered opinion, the penalty levied by the Assessing Officer u/s 271(1)(b) of the

Act depends upon the outcome of the appeal filed by the assessee before the Tribunal on additions made towards cash deposits. In case the addition made by the Assessing Officer is decided in favour of the assessee, then the question of assessee complying with the notices issued by the Assessing Officer need to be looked into in different angle. Therefore, in our considered opinion, the Assessing Officer ought not to have concluded the penalty proceedings u/s 271(1)(b) of the Act, before the appeal filed by the assessee is decided by the Tribunal.

10. In this view of the matter and considering the facts and circumstances of the case, we are of the considered opinion, that it is premature to decide the issue of penalty by the Assessing Officer u/s 271F of the Act for both the A.Ys and also penalty u/s 271(1)(b) of the Act for A.Y 2016-17. In our considered opinion, the learned CIT (A) should have kept the appeal filed by the assessee in abeyance when the appellant made a request that the appeal filed by the assessee before the Tribunal are pending for adjudication and the outcome of the appeal filed by the assessee is having a bearing on these appeals. Thus, we set aside the order passed by the learned CIT (A) for both the A.Ys in so far as confirming levy of penalty u/s 271F of the Act and 271(1)(b) of the Act and restored the issue back to the file of the Assessing Officer. We further direct the Assessing Officer to take up the issue of penalty under both the provisions after the outcome of the appeal filed by the assessee before the ITAT and decide the issue in accordance with the law.”

9. In this view of the matter and by following the decision of the Coordinate Bench of the Tribunal in ITA Nos.532 to 534/Hyd/2023, order dated 21/05/2024, we set aside the order passed by the learned CIT (A) and restore the issue back to the file of the Assessing Officer for fresh consideration. The Assessing Officer is hereby directed to reconsider the issue of penalty u/s 272A(1)(d) of the I.T. Act, 1961 after the outcome of appeal filed by the assessee before the first appellate authority.

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

Order pronounced in the Open Court at the time of hearing itself i.e. on 28th October, 2024.

Sd/-

Sd/-

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| (LALIET KUMAR) JUDICIAL MEMBER | (MANJUNATHA, G.) ACCOUNTANT MEMBER |
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Hyderabad, dated 28th October, 2024

Vinodan/sps

Copy to:

| S.No | Addresses |
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| 1 | Shri Mohd. Wajahat Ali Khan, C/o P Murali & Co. CAs, 6-3-655/2/3 Somajiguda, Hyderabad 500082 |
| 2 | Income Tax Officer (International Taxation)-1 Hyderabad |
| 3 | Pr. CIT – (IT & TP) Hyderabad |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order