

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 1653/Bang/2024
Assessment Year : 2015-16

Shri Ravishankar Bangalore Jayaram, No. 1758, East End Main Road, 9 th Block, Jayanagar, Bangalore – 560 069. PAN: ASCPJ1164G	Vs.	The Income Tax Officer, Ward – 7(2)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Shivakumar .G, CA
Revenue by	:	Shri Subramanian .S, JCIT-DR

Date of Hearing	:	16-10-2024
Date of Pronouncement	:	19-11-2024

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the orders of the NFAC, Delhi dated 29/07/2024 in respect of the A.Y. 2015-16 in which the Ld.CIT(A) had confirmed the penalty imposed u/s. 271(1)(c) of the Act.

2. The brief facts of the case are that the assessee B.R. Jayaram died on 16/09/2015 and thereafter the legal heirs were brought on record and the assessment u/s. 143(3) was completed on 28/12/2017. Subsequently, the AO initiated proceedings u/s. 271(1)(c) of the Act for the reason that the

assessee had furnished inaccurate particulars of income. The said order was challenged before the Ld.CIT(A) and the Ld.CIT(A) dismissed the appeal for non-prosecuting the appeal of the assessee. As against the said order of the Ld.CIT(A), the assessee is in appeal before this Tribunal on the following grounds:

<i>Grounds of Appeal</i>		<i>Tax effect relating to each Ground of appeal (see note below)</i>
1.	<i>The impugned Appellate order dated: 29-07-2024 passed by the National Faceless Appeal Centre (NFAC), Delhi is opposed to law, facts and circumstances of the case.</i>	
2.	<i>That the Ld. CIT (A), NFAC erred in framing the order ex-parte without providing adequate opportunity to the assessee and without appreciating the facts that the appellant had filed a response on 25-07-2024 requesting 10 days' time to file the response to the Notice issued on 18-07-2024.</i>	<i>Rs.50,11,245/-</i>
3.	<i>That the Ld. CIT (A), NFAC erred in dismissing the appeal on the ground that the the appellant's appeal in quantum addition has already been dismissed by the CIT(A) vide ITA No. 259/CIT(A)-7/2017-18 without appreciating the fact that the appellant had appealed against the appellate order and the Hon'ble ITAT Bangalore bench had dismissed the appeal on the ground of the withdrawal of appeal by the appellant consequent to availing remedies under the scheme of Vivad-se-Vishwas Scheme.</i>	<i>Same as above</i>
4.	<i>The Ld.CIT(A), NFAC erred in not appreciating the fact that mere wrong claim of deduction u/s 54F of the Act would not automatically lead to imposition of penalty u/s 271(1)(c) of the Act.</i>	
5.	<i>The Appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.</i>	<i>Same as above</i>
<i>Total tax effect (see note below)</i>		<i>Rs.50,11,245/-</i>

3. At the time of hearing, the Ld.AR submitted that the assessee had filed an adjournment petition on 26/07/2024 to the notice issued on 18/07/2024 seeking 10 days time to file their submissions, but the Ld.CIT(A) without granting the time, rejected the adjournment petition and decided the appeal on 29/07/2024. In the said order, the Ld.CIT(A) had given the reason that since the assessee's quantum appeal was dismissed, the present adjournment petition could not be entertained. The Ld.AR submitted that the rejection of the quantum appeal by the Ld.CIT(A) would not be a reason for rejecting the adjournment petition and decided the appeal ex-parte and prayed to grant one more opportunity to contest the matter on merits.

The Ld.DR relied on the order of the Ld.CIT(A) and prayed to dismiss the appeal.

4. We have heard the arguments of both sides and perused the materials available on record.

5. We have considered the fact that the assessee had responded to the notice issued on 18/07/2024 and sought for an adjournment for 10 days. But unfortunately, the Ld.CIT(A) without granting the 10 days time, had passed the order on 29/07/2024 after observing that the quantum appeal has already been rejected by him. It seems that the Ld.CIT(A) on the misconception had decided the appeal ex-parte without granting sufficient time on the ground that the penalty proceedings need not be adjudicated on merits when the quantum appeal itself was dismissed by him. The Ld.CIT(A) had erred in observing like that in his order since the order passed by the Ld.CIT(A) on the quantum appeal is not final and the assessee has every right to challenge the same before this Tribunal and therefore the reasoning given by the Ld.CIT(A) for not granting the required time is not correct. Further, the assessee had sought for only 10 days of time and nothing will happen if the required time was granted by the Ld.CIT(A). In these circumstances we are inclined to set aside the order of the Ld.CIT(A) and remit the issue to its file to decide the issue afresh without being

influenced by the quantum appeal order, on merits and in accordance with law, after granting an opportunity of being heard to the assessee.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19th November, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 19th November, 2024.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore