

IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 5318/MUM/2024

(Assessment Year : 2017-18)

Sejal Nirmam Kothari

4-CD Block, Maker Apartment,
232, Walkeshwar Road, Walkeshwar,
Mumbai,
Maharashtra – 400006
PAN: AGMPK8840L

..... Appellant

v/s

ITO, Ward – 19(3)(1)

Mumbai- 400012

..... Respondent

Assessee by : Shri Dharan Gandhi

Revenue by : Shri Raj Singh Meel, Sr.DR

Date of Hearing – 21/11/2024

Date of Order - 25/11/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal challenging the impugned order dated 28/11/2022, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2017-18.

2. In this appeal, the assessee has raised the following grounds: –

"1. The Ld. Commissioner of Income-tax (Appeal), NFAC, erred in law and on facts by upholding the penalty of Rs.1,20,000/- levied under section 271AAC(1) of the Income Tax Act, 1961.

2. The Ld. Commissioner of Income-tax (Appeal), NFAC, failed to appreciate that the assessment order u/s 143(3) was passed through best judgement assessment under section 144 of the income Tax Act, 1961 without affording a proper hearing to the assessee.

3. The penalty proceedings initiated under section 271AAC(1) are void-ab-initio

As the Hon'ble ITAT, in its order dt. 19.01.2023, set aside the original Assessment order passed by the Assessing Officer under section 143(3) and directed a fresh assessment.

3. The Ld. Commissioner of Income-tax (Appeal), NFAC, overlooked the fact that the original addition of Rs. 20,00,000/- made u/s 69A r.w.s. 115BBE of the Income Tax Act, 1961, has been deleted in the reassessment proceedings, leaving no grounds for levying penalty under section 271AAC(1)."

3. The solitary grievance of the assessee, in the present appeal, is against the levy of penalty under section 271AAC(1) of the Act.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is an individual who filed a return of income on 28.08.2017 declaring a total income of Rs.4,66,050 for the year under consideration. The return filed by the assessee was selected for scrutiny under CASS and statutory notices under section 143(2) and section 142(1) were issued and served on the assessee. During the assessment proceedings, it was observed that the assessee has deposited cash amounting to Rs.20 lakh during the demonetization period. Accordingly, the assessee was asked to explain the nature and source of the cash deposit in its bank account. However, despite multiple opportunities being granted to the assessee, the assessee failed to comply with the notices issued by the Assessing Officer ("AO"). Accordingly, vide order passed under section 144 of the Act, the AO

concluded the assessment on best judgment on the basis of document/information available on record and made an addition of Rs.20 lakh to the total income of the assessee at a special rate under section 115BBE of the Act. In further appeal, the learned CIT(A) dismissed the appeal filed by the assessee on account of non-prosecution. During the hearing, the learned Authorized Representative ("*learned AR*") submitted that in quantum appeal against the aforesaid order passed by the learned CIT(A), the co-ordinate bench of the Tribunal vide order dated 19.01.2023 passed in ITA No.2982/Mum/2022 for the assessment year 2017-18 set aside the order passed by the learned CIT(A) and remanded the matter to the file of the AO to decide a fresh after providing opportunity of being heard to the assessee.

5. Meanwhile vide a penalty order dated 31.01.2022 passed under section 271AAC(1) of the Act, the AO levied a penalty of Rs.1,20,000/-. In further appeal, the learned CIT(A) vide impugned order upheld the levy of penalty under section 271AAC(1) of the Act. Being aggrieved, the assessee is in appeal before us.

6. We are of the considered opinion that since in the quantum appeal, the co-ordinate bench of the Tribunal has already restored the matter to the file of the AO for *de novo* assessment, the penalty levied under section 271AAC(1) of the Act, at this stage, does not survive and therefore, is set aside. During the hearing, the learned AR also placed on record, the order dated 23.03.2024 passed by the AO under section 143(3) r.w. section 254 of the Act, in the second round of assessment proceedings. From the perusal of

the aforesaid order dated 24.03.2024, passed pursuant to the directions issued by the Tribunal, we find that the AO has accepted the total income declared by the assessee in its return of income and no addition has been made against the assessee. Generally, the AO is at liberty to take a fresh call on the levy of penalty, as per law, in consonance with the fresh assessment as and when framed. However, as in the present case, in the second round of assessment proceedings, the assessee was assessed at the returned income. Therefore, the penalty levied under section 271AAC(1) of the Act in question before us, in any case, is not sustainable and therefore, is quashed. As a result, the impugned order is set aside and the grounds raised by the assessee are allowed.

7. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 25/11/2024

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 25/11/2024

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai