

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1313/Bang/2024
Assessment Year: 2009-10

Sri Basavana Mathikere Betaswamy Gowda Ramaswamy Gowda, 780, Lakshmi Nivasa, 5 th Main, II Stage, West of Chord Road, Rajajinagar, Bangalore – 560 010.	Vs.	The Income Tax Officer, Ward – 2(2)(2), Bengaluru. .
PAN – ADFPR 4248 H		
APPELLANT		RESPONDENT

Assessee by	:	Ms. Sunaina Bhatia, Advocate
Revenue by	:	Shri V Parithivel, JCIT (DR)

Date of hearing	:	16.10.2024
Date of Pronouncement	:	25.11.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 17/05/2024 in DIN No. ITBA/NFAC/S/250/2024-25/1064954394(1) for the assessment year 2009-10.

2. The only issue raised by the assessee is that the Id. CIT(A) erred in confirming the penalty levied by the AO for Rs. 11,37,138/- under the provisions of sec. 271(1)(c) of the Act.

3. At the outset, the Id. AR on behalf of the assessee submitted that the initiation of the penalty proceedings u/s 271(1)(C) of the Act is bad in law and, therefore, the penalty order is not sustainable. As per the Id. AR, the AO has neither stated specific charge in the notice issued u/s 274 of the Act nor in the assessment order dated 30/12/2011, whether the penalty was levied for concealment of income or on account of furnishing of inaccurate particulars of income. Accordingly, the Id. AR contended that the penalty levied by the AO u/s 271(1)(c) of the Act is not sustainable.

4. On the other hand, the learned DR before us vehemently supported the order of the authorities below.

5. We have heard the rival contentions of both the parties and perused the materials available on record. The penalty u/s 271(1)(c) of the Act can be levied either on account of concealment of income or furnishing of inaccurate particulars of income. As such in the absence of any specific charge for initiation of penalty u/s 271(1)(c) of the Act, the penalty levied u/s 271(1)(c) of the Act is not sustainable. The Hon'ble High Court of Bombay in the case of Pr. CIT VS. Golden Peas Holiday and Resorts Pvt. Ltd., reported in 124 Taxmann.com 248 has held as under:

5. We have carefully examined the record as well as duly considered the rival contentions. Both the Commissioner (Appeals) as well as the ITAT have categorically held that in the present case, there is no record of satisfaction by the Assessing Officer that there was any concealment of income or that any inaccurate particulars were furnished by the assessee. This being a sine qua non for initiation of penalty proceedings, in the absence of such satisfaction, the two authorities have quite correctly ordered the dropping of penalty proceedings against the assessee.

6. The view taken by the Hon'ble Bombay High Court in the case cited above was subsequently upheld by the Hon'ble Apex Court of India reported in 124 Taxmann.com 249.

7. Coming to the facts of the case, we have perused the assessment order and the notice issued u/s 274 of the Act placed on page 13 of the paper book, we note that the AO has not specified the charge for initiation of the penalty whether it was for concealment of income or furnishing inaccurate particulars of income. Accordingly, we are of the view that in the absence of specific charge by the AO, the penalty levied u/s 271(1)(C) of the Act is not sustainable. Accordingly, we set aside the finding of the Id. CIT(A) and direct the AO to delete the penalty levied by him u/s 271(1)(c) of the Act.

8. As we have decided the issue in favour of the assessee on the technical ground raised by the assessee, accordingly, we do not find any reason to adjudicate the grounds of appeal of the assessee raised on merit. As such, the grounds raised by the assessee on merit become infructuous. Accordingly, we dismiss the same as infructuous.

9. In the result, the appeal of the assessee is hereby partly allowed.

Order pronounced in court on 25th day of November, 2024

Sd/-
(KESHAV DUBEY)
Judicial Member
Bangalore
Dated, 25th November, 2024
/ vms /

Sd/-
(WASEEM AHMED)
Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore