

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT  
AND  
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

ITA No.1335/Bang/2024
Assessment year : 2014-15

Shri Aslam Pasha, Silk Reeler, Kadaripalya, Sidlagatta, Chikkaballapur – 562 105. <b>PAN: ADNPP 6672P</b>	Vs.	The Income Tax Officer, Ward 1, Chikkaballapur.
APPELLANT		RESPONDENT

Appellant by	:	Shri Anjan Reddy, CA
Respondent by	:	Smt. Neha Sahay, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	20.11.2024
Date of Pronouncement	:	28.11.2024

**ORDER**

*Per Prashant Maharishi, Vice President*

1. This appeal is filed by Mr. Aslam Pasha (the assessee/appellant) for the assessment year 2014-15 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [Id. CIT(A)] dated 10.5.2024 wherein the appeal filed by the assessee against the penalty order passed u/s. 271(1)(c) of the Income-tax Act, 1961

(the Act) by The ITO, Ward 1, Chikkaballapur, (the Id. AO) dated 29.6.2017 levying a penalty of Rs. 24,76,570, was dismissed.

2. The assessee is aggrieved and has raised the following grounds of appeal:-

“1. The Learned CIT(A) erred:

(i). In not appreciating that, the assessee neither concealed the income nor furnished any inaccurate particulars of income. On disallowance of losses, the penalty proceedings automatically attracted is correct?

2. The Learned CIT(A) has failed to discuss the circumstances under which the penalty was levied by the Assessing Officer.

3. The penalty notice u/s 274 r.w.s 271 of the IT Act, for initiation of penalty u/s 271(1)(c) of the Act, was defective and issued without any conditions precedent for passing of valid penalty order u/s u/s. 271(1)(c)of the Act.

4. The impugned penalty notice u/s 274 r.w.s 271 (1) ( C) needs to be deleted.

5. The defective notice did not indicated whether it was issued to the assessee for concealment of income or for furnishing inaccurate particulars of income. The Assessing officer failed to specifying the default in his notice.

6. Usually Department uses Printed Penally Notices, but in the assessee's case the penalty notice was prepared through system but not striked out the irrelevant columns .

3. This appeal is filed late by 3 days as appeal was filed on 12-07-2024 which should have been filed on or before 9-7-2024. The delay is caused due to person managing the accounts of the

assessee in contacting the tax consultants for filing the appeal. On hearing the parties, it was found that delay is due to bona fide latches on part of the employee of the assessee is handing over the documents for filing of appeal to the consultant, we find it to be sufficient cause and delay is also nominal hence, condoned.

4. The assessee is aggrieved with levy of penalty and has raised several facets of challenge to the same.
5. As per facts available on record, the assessee is engaged in the business of silk waste business, filed his return of income on 30.11.2014 at a total income of Rs.2,07,330. This return was picked up for scrutiny by issue of notice u/s. 143(2) on 29.8.2015. The Id. AO noted that assessee is proprietor of M/s. SAP Silks engaged in the business of trading in waste silk and also owns tipper lorries which are given on hire to M/s. Raghavendra Crushers. Assessee is also a director in Rajmahal International P. Ltd., a company which is engaged in export of silk waste, granite blocks, fabric and TMT bars. The assessment order was passed u/s. 143(3) of the Act on 17.12.2016 wherein it was held that M/s. SAP Silks, being proprietary concern of assessee, is not a genuine entity and is engaged in bogus purchase and sales. That proprietary concern has shown gross loss of Rs.71,45,300. The Id. AO rejected the books of account by applying the provisions of section 145 and disallowed the loss of Rs.71,45,300. Thus, total income of assessee was assessed at Rs.74,62,555.

6. Penalty proceedings were initiated on 17.12.2016. Subsequently on change in incumbent, notices were issued, however, no response was received. The Id. AO held that tax on concealed income worked out to Rs.21,76,568 and penalty @ 100% thereon was levied by penalty order dated 29.6.2017.
7. This penalty order was challenged by assessee before the Id. CIT(A). In form no 35, it was stated that assessee has filed a revision petition u/s. 264 of the Act on 29.6.2017, therefore no penalty could have been levied u/s. 275(1A) of the Act. The Id. CIT(A) issued several notices to the assessee, however, no response was received and thereafter he confirmed the penalty holding that Id. AO has categorically held that the business of SAP Silks is not genuine and bogus, hence penalty of Rs.21,76,570 is correctly levied.
8. Aggrieved with the same, assessee is in appeal before us. Mr. Anjan Reddy, CA appeared before us and submitted that
  - i. penalty orders passed are bad in law for the reason that the fact was brought to the notice of Id. CIT(A) in form no 35 that a petition u/s. 264 has been filed before the Id. CIT and without taking cognizance of the same, penalty has been confirmed.
  - ii. recast trading account was furnished before the AO correcting the errors but same was not at all considered

during the course of assessment proceedings as well as during the appellate proceedings.

- iii. in case of sister concern, M/s. Pasha Associates, the transactions which are held to be bogus in case of assessee are held to be genuine in case of that assessee.
- iv. during the course of assessment proceedings, it is mandatory that there has to be a satisfaction to be recorded by the Id. AO about levy of penalty, same is missing. In Assessment order where no such satisfaction is recorded.
- v. even in the penalty order, there is no specific charge about the concealment of income or furnishing inaccurate particulars of income, but the Id. AO has stated that total tax on concealed income is Rs.21,76,568. The tax is concealed that is held by the Id. AO, but what is the charge has not been mentioned and therefore penalty order is invalid.
- vi. Referring to decision of Hon'ble Karnataka High Court in 359 ITR 565 and specifically referred to para 59 to 61 of that order, shown the penalty notice where none of the twin charges are struck off, so penalty was invalid.

9. The Id. DR vehemently supported the order of the Id. lower authorities. It was submitted that the assessee did not prove the genuineness of the loss incurred by assessee in silk business. Same was not challenged on quantum before the higher authorities, no reply was furnished before the AO as well as before the Id. CIT(A). Therefore, now raising legal issues before the Tribunal is not allowable. Therefore, she submitted that penalty is correctly levied by the lower authorities.
10. We have carefully considered the rival contentions and perused the orders of Id. lower authorities. We find that the loss of Silk business of the assessee was held to be non-genuine and it resulted into disallowance of loss. Looking at the assessment order, we do not find that the Id. AO has recorded any satisfaction with respect to any of the twin charges provided u/s. 271(1)(c) of the Act. The only mention of penalty is to issue a notice u/s. 271(1)(c) of the Act. Though assessee has raised several contentions before us, however, no reply was furnished before the AO or before the Id. CIT(A). Undoubtedly several opportunities were granted by both the lower authorities. Assessee also mentioned in form no 35 that there is a pending petition u/s. 264 of the Act before the CIT, and assessee did not substantiate it further, Id. appellate authority did not take into cognizance the same fact. Further, it is also submitted before us that penalty notice is defective relying on the decision of the Hon'ble Karnataka High Court which was placed before us. The penalty notice clearly shows that it has twin charges, but none

of them was cancelled. However, as assessee did not appear before the Id lower authorities and such explanation was not available with them as were raised before us, we restore the appeal back to the file of the Id. AO with a direction to the assessee to substantiate all these legal arguments and on the merits, if required, and thereafter the Id. AO will decide the issue afresh, after providing opportunity of hearing to the assessee.

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

Pronounced in the open court on this 28<sup>th</sup> day of November, 2024.

Sd/-

( PRAKASH CHAND YADAV )  
JUDICIAL MEMBER

Sd/-

( PRASHANT MAHARISHI )  
VICE PRESIDENT

Bangalore,  
Dated, the 28<sup>th</sup> November 2024.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.