

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

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

ITA No.2020/Bang/2024
Assessment Year : 2015-16

Sree Rajendrasuri Gurumandir Trust, 25 and 25/1, Jain Temple Road, Vishwveswarapuram, Bengaluru – 560 004. PAN : AAJTS 8921 K	Vs.	The Income Tax Officer (Exemptions), Ward – 3, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Suman Lunkar, AR.
Revenue by	:	Shri. Subramanian, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	28.11.2024
Date of Pronouncement	:	04.12.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the Order passed by the National Faceless Appeal Centre (NFAC) [DIN and Order No.ITBA/NFAC/S/250/2023-24/1056681273 (1)] dated 30.09.2023.

2. The sole and substantiating ground raised by the assessee to challenge Order of NFAC confirming the penalty levied by the AO of Rs.54,700/- under section 272A(2)(e) of the Act, for delay in filing the return of income. The due date for filing return of income was 30.09.2015 but the assessee filed its return on 31.03.2017. Accordingly, AO levied penalty under section 272A(2)(e) of the Act of Rs.54,700/-.

3. At the outset of hearing, the learned Counsel drew our attention that the appeal filed by the assessee is barred by 328 days. However, the Registry has not raised any defect memo for delay in filing the appeal. An application dated 22.11.2024 has been filed by the assessee stating therein the reasons for delay in filing the appeal which is as under:

“4. The Petitioner was not aware of passing of the appellate order for this year. The Petitioner had not received any intimation of passing of this order through email. The Petitioner was under a bonafide belief that the appeal filed before the Cir(A) was pending for disposal. The Petitioner on 13/10/2024 received a copy of the Intimation made u/s 143(1) of the Act wherein, the refund determined was adjusted against the outstanding demand for AY 2015-16. A copy of the Intimation made for AY 2023-24 is enclosed. Immediately, the Petitioner logged into the portal and found that the appellate order for AY 2015-16 was already passed in September 2023 itself. Immediately, arrangements were made to file the appeal before the honourable ITAT.”

4. On perusal of the reasons stated in the application dated 22.11.2024, relying on the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others [1987] 167 ITR 471, we find there is sufficient cause for belated filing of the appeal and hence we condone the delay and proceed to dispose off the appeal.

5. The learned Counsel submitted that similar issue has been decided by the Hon'ble Tribunal in assessee's own case in ITA No.754/Bang/2023 for Assessment Year 2014-15, Order dated 05.12.2023, wherein the assessee had filed the return of income belatedly on 31.12.2017 and the Hon'ble Tribunal has decided the issue in favour of the assessee. Therefore, she requested that since the facts are similar for both the Assessment Years, the same Order may be applied to this case also.

6. The learned DR relied on the Order of the lower authorities and submitted that the assessee Trust is registered under section 12A of the Act and was required to file the return of income as per due date as specified under section 139 of the Act. However, the assessee had belatedly filed the return of income. Therefore, the AO has rightly imposed penalty and the CIT(A) has confirmed the Order of the AO. Therefore, in the light of the above, the Orders of the lower authorities ought to be upheld.

7. Considering the rival submissions, the material available on record and the Orders of the authorities below, we noted that the assessee is registered under section 12A of the Act. The assessee filed its return of income on 31.03.2017 and there is a delay of 547 days in filing the return of income for the impugned Assessment Year. During the course of proceedings before the lower authorities, assessee submitted the reasons for delay in filing the appeal, which is placed in Paper Book at Pages 24 and 25. The ld. Council placed reliance on its own case for the AY 2014-15 and on going through the Order passed by the Co-ordinate Bench of the Bangalore Bench of the Tribunal in assessee's own case for Assessment Year 2014-15 (supra), it is observed that the Co-ordinate Bench has allowed the appeal of the assessee by observing as under:

“3. We have heard the rival submissions and perused the materials available on record. The main contention of the ld. A.R. is that as per section 275(1)(c) of the Act, the order u/s 272A(2)(e) of the Act is to be passed before the expiry of financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed or 6 months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. Thus, she submitted that in the present case, notice u/s 274 of the Act has been issued on 21.12.2020. As such, penalty order to be passed on or before 30th June, 2021. However, in the present case, penalty order has been passed on

5.3.2022, which is time barred. For this purpose, she relied on the order of the Tribunal in the case of Amit Sabharwal in ITA No.886/Del/2018 dated 14.5.2019. In the present case, as per clause (c) of section 275(1) of the Act, the penalty proceedings u/s 272A(2)(e) of the Act have been initiated vide notice dated 21.12.2020. According to ld. A.R., the time limit to pass penalty order is 6 months from the end of month in which penalty proceedings were initiated would expire on 30.6.2021. She, therefore submitted that, competent authority could have imposed penalty before 30.6.2021. However, the penalty order in the present case has been passed on 5.3.2022, which is clearly barred by limitation.

3.1 On the other hand, ld. D.R. submitted that in the normal circumstances the above argument of the assessee's counsel holds good. However, in the present case, the penalty proceedings though initiated on 21.12.2020, the time limit to complete the penalty proceedings will lapse on 30.6.2021. However, this period is Covid period. Penalty order could not able to be passed and the period of limitation has been suspended by Hon'ble Supreme Court in Miscellaneous Application No.21 of 2022 and in Miscellaneous Application No.665 of 2021 in Suo Moto WP No.(C) No.3 of 2020 in Re: Cognizance of Limitation dated 10.1.2022. Hence, this period to be excluded. In our opinion, there is force in the argument of ld. D.R. The time limit to pass the penalty order has been expired on 30.6.2021. However, during this period, there was Covid'19 and the Limitation Act has been suspended as rightly pointed out by the Hon'ble Supreme Court in Miscellaneous Applications cited (supra). Being so, the time limit will commence from 28.2.2022 and in the present case, penalty order has been passed on 5.3.2022 which is within time. On this count, the assessee have no case.

3.2 However, the other argument of the ld. A.R. is that initiation of penalty proceedings itself is bad in law as it was initiated vide notice dated 21.12.2020 and the initiation ought to have been done within the reasonable time after completion of assessment. According to her, in the present case, the assessee's return of income has been accepted as it is, as such, copy of return of income filed on 31.3.2017 to be considered as copy of assessment order for all practical purposes. The ld. AO ought to have initiated the penalty proceedings within reasonable time from this date and in the present case, since it has been initiated vide notice dated 21.12.2020, which is beyond the

reasonable time expected from the ld. AO to initiate the penalty proceedings u/s 272A(2)(e) of the Act. She relied on the order of the Tribunal in the case of Amit Sabharwal in ITA No.886/Del/2018 dated 14.5.2019, wherein the coordinate bench of Delhi Tribunal has considered the following judgements and decided the issue in favour of the assessee.

3.2.1 Referring to the decision of the Cochin Bench of the Tribunal in the case of Noble Pictures vs. JCIT reported in 90 ITD 248, she submitted that the Tribunal in the said decision has held that there should be a reasonable time within which penalty proceeding is to be initiated or to be completed. Even if a time is not prescribed under the law, however, the penalty cannot hang on the head of an assessee as sword of Damocles indefinitely and it should be initiated and completed within a reasonable time.

3.2.2 Referring to the decision of the Hon'ble Calcutta High Court in the case of Indian Handloom Textiles vs. ITO reported in 68 ITD 0560, she submitted that the penalty proceedings u/s 271B initiated 34 months after the completion of assessment was held to be invalid. He accordingly submitted that since, in the instant case, the penalty proceedings have been initiated after a period of more than four years, therefore, the penalty so levied by the Assessing Officer and upheld by the CIT(A) is not justified. She also relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs. NHK Japan Corporation reported in 305 ITR 132.

3.3 In the present case also, the assessee has filed return of income for the assessment year 2014-15 on 31.3.2017. There was no regular assessment and the return of income has been accepted as it is. In our opinion, copy of the return of income itself serve as an assessment order for all practical purposes. So the penalty proceedings has been initiated vide notice dated 21.12.2020, which is approximately after lapse of 45 months. Therefore, the penalty order passed by ld. AO u/s 272A(2)(e) of the Act is not within reasonable time.

3.4 Further, the Hon'ble Delhi High Court in the case of PCIT Vs. JKD Capital & Finlease Ltd. in ITA No.780 of 2015 vide judgement dated 13.10.2015, held as under:

“8. We are unable to agree with the above submission of learned Standing counsel for the Revenue. Section 275 (1) (c) reads as under:

(a)....

(b)....

(c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

9. In terms of the above provision, there are two distinct periods of limitation for passing a penalty order, and one that expires later will apply. One is the end of the financial year in which the quantum proceedings are completed in the first instance. In the present case, at the level "of the AO, the quantum proceedings was completed on 28th December 2007. Going by this date, the penalty "order could not have been passed later than 31st March 2008. The second possible date is expiry of six months from the month in which the penalty proceedings were initiated. With the AO having initiated the penalty proceedings in December 2007, the last date by which the penalty order could have been passed is 30th June 2008. The later of the two dates is 30th June 2008.

10. Considering that the subject matter of the quantum proceedings was the non-compliance with Section 269 T of the Act, there was no need for the appeal against the said order in the quantum proceedings to be disposed of before the penalty proceedings could be initiated. In other words, the initiation of penalty proceedings did not hinge on the completion of the appellate quantum proceedings. This position has been made explicit in the decision in CIT v. Worldwide Township Projects Limited (supra) in which the Court concurred with the view expressed in Commissioner of Income- Tax v. Hissaria Bros. (2007) 291 ITR 244(Raj) in the following terms:

"The expression other relevant thing used in s. 275(1)(a) and cl. (b) of Sub-s. (1) of S. 275 is significantly missing from cl. (c) of s. 275(1) to make out this distinction very clear. We are, therefore, of the opinion that since penalty proceedings for default in not having transactions through the bank as required under ss. 269SS and 269T are not related to the assessment proceeding but are independent

of it, therefore, the completion of appellate proceedings arising out of the assessment proceedings or the other proceedings during which the penalty proceedings under ss. 271D and 271E may have been initiated has no relevance for sustaining or not sustaining the penalty proceedings and, therefore, cl. (a) of sub-s. (1) of s. 275 cannot be attracted to such proceedings. If that were not so cl. (c) of s. 275(1) would be redundant because otherwise as a matter of fact ever/penalty proceeding is usually initiated when during some proceedings such default is noticed, though the final fact finding in this proceeding may not have any bearing on the issues relating to establishing default e.g. penalty for not deducting tax at source while making payment to employees, or contractor, or for that matter not making payment through cheque or demand draft where it is so required to be made. Either of the contingencies does not affect the computation of taxable income and levy of correct tax on chargeable income; if cl. (a) was to be invoked, no necessity of cl. (c) would arise." (emphasis supplied)

11. In fact, when the AO recommended the initiation of penalty proceedings the AO appeared to be conscious of the fact that he did not have the power to issue notice as far as the penalty proceedings under Section 271-E was concerned. He, therefore, referred the matter concerning penalty proceedings under Section 271-E to the Additional CIT. For some reason, the Additional CIT did not issue a show cause notice to the Assessee under Section 271-E (1) till 20th March 2012. There is no explanation whatsoever for the delay of nearly five years after the assessment order in the Additional CIT issuing notice under Section 271-E of the Act. The Additional CIT ought to have been conscious of the limitation under Section 275 (1) (c), i.e., that no order of penalty could have been passed under Section 271-E after the expiry of the financial year in which the quantum proceedings were completed or beyond six months after the month in which they were initiated, whichever was later. In a case where the proceedings stood initiated with the order passed by the AO, by delaying the issuance of the notice under Section 271- E beyond 30th June 2008, the Additional CIT defeated the very object of Section 275(1)(c).

12. In that view of the matter, the order of the CIT (A) which has been affirmed by the impugned order of the ITAT does not suffer from any legal infirmity.”

3.5 Being so, considering the facts and circumstances of the case, by placing reliance on the judgement of Hon'ble Delhi High Court in the case of JKD Capital & Finlease Ltd. dated 13.10.2015, we are of the opinion that penalty order has not been passed within reasonable time. Accordingly, we quash the penalty order dated 5.3.2022 on this reason.

3.6 Since we have quashed the penalty order, we refrain from going to other grounds raised by the assessee at this stage, which are kept open.

4. In the result, appeal of the assessee is allowed.”

8. Respectfully following the decision of the Co-ordinate Bench in assessee's own case (supra), we quash the penalty Order passed by the lower authorities.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SOUNDARARAJAN K.)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated : 04.12.2024.
/NS/*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.