

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

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

ITA No.2021/Bang/2024
Assessment Years : 2015-16

Zaheer Ahamed, 6/125, Ahamed Nagar Mohalla, Galipura Extension, Chamarajanagar – 571 313. PAN – AOXPA 2403 G	Vs.	The Income Tax Officer, Ward – 1, Chamarajanagar. .
APPELLANT		RESPONDENT

Assessee by	:	Shri Tharun Kothari, CA
Revenue by	:	Shri V Parithivel, JCIT (DR)

Date of hearing	:	28.11.2024
Date of Pronouncement	:	11.12.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the National Faceless Assessment Centre (NFAC), Delhi, dated 19/09/2024, in ITA No. ITBA/NFAC/S/250/2024-25/1068824894(1) for the assessment year 2015-16.

2. At the beginning of the hearing, the learned counsel representing the assessee explained that the addition (the amount or issue added by the Assessing Officer) for which the penalty was imposed by the Assessing Officer (AO) and later confirmed by the learned Commissioner

of Income Tax (Appeals) [CIT-A] had been set aside by the learned CIT-A in the original assessment (also called the "quantum proceedings"). This decision by the learned CIT-A was made in an order dated 9 October 2024.

3. The learned Authorized Representative (AR) of the assessee also referred to pages 27 to 31 of the appeal papers, where the order of the learned CIT-A in the quantum proceedings was attached. In the order, the learned CIT-A had set aside the original addition made by the AO and instructed the AO to review the matter afresh. Therefore, the learned AR requested that the penalty order be set aside and send back to the AO to initiate a fresh process of reviewing and deciding the penalty, based on the outcome of the new assessment that the AO would make according to the CIT-A's order.

4. On the other hand, the learned Departmental Representative (DR), representing the income tax department, did not raise any objections to the request made by the learned AR of the assessee. The DR agreed that if the penalty order was to be set aside and sent back to the AO, it should be done in line with the provisions of the law and based on the outcome of the fresh assessment that the AO would carry out as per the CIT-A's directions.

5. We have heard both parties – the learned AR for the assessee and the learned DR – and have reviewed all the materials and documents available on record. We observe that the penalty in question was levied by the authorities below based on a certain quantum addition. However, it is a fact that the quantum addition, which led to the imposition of the penalty, has already been set aside by the learned CIT-A in the quantum proceedings, through an order dated 9 October

2024. The CIT-A's order clearly directed the AO to re-assess the matter in detail and come to a fresh decision. The relevant part of the learned CIT-A's order, dated 9 October 2024, is as follows:

“5.5. Therefore, I am of the considered opinion that the appellant's case needs to be examined afresh on merits. Considering the same and in the interests of justice, and abiding by the principles of natural justice, and also by virtue of exercising the powers conferred upon the Commissioner of Income Tax (Appeals) under Section 251 of the Income Tax Act, 1961 (as amended by The Finance Act, 2024 w.e.f 01/10/2024), the assessment made u/s 144 on 30.11.2017 is hereby set-aside, and the case is referred back to the Assessing Officer for making a fresh assessment after considering the appellant's submissions as well as the documents relied upon by the appellant and/or any other details the appellant may wish to file in the case.”

6. Based on the above, we conclude that since the quantum addition, which was the basis for levying the penalty under section 271(1)(c) of the Income Tax Act, has already been set aside for re-examination by the AO, the penalty order that was passed is no longer sustainable or valid. The penalty proceedings are, therefore, dependent on the outcome of the re-assessment in the quantum proceedings. Since the CIT-A has directed the AO to make a fresh assessment, it is only appropriate that the penalty proceedings are also reviewed again, based on the result of this new assessment. As such, we are of the view that the penalty proceedings should be initiated afresh by the AO, once the new assessment is concluded in accordance with the law. This means that the appeal does not need to be decided further because the penalty order cannot stand in light of the fresh assessment that is being ordered by the learned CIT-A. Therefore, the ground of appeal raised by the assessee is dismissed as infructuous as it no longer has any effect or purpose, as the penalty proceedings need to start over again based on

the fresh assessment. In conclusion, the appeal filed by the assessee is dismissed as infructuous.

7. In the result, the appeal filed by the assessee is dismissed as infructuous.

Order pronounced in court on 11th day of December, 2024

Sd/-

(KESHAV DUBEY)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 11th December, 2024

/ vms /

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