

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1069/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2016-17

M/s. Bhavya Marketing,
2/7, Amman Koil Street,
Metha Nagar,
Chennai – 600 029.

**The Assistant Commissioner
of Income Tax,**
Vs. Corporate Circle 2(4),
Chennai.

PAN: AAUFA 4751A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Vikram Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri R. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing

: 18.12.2024

घोषणा की तारीख/Date of Pronouncement

: 20.12.2024

आदेश / O R D E R

PER GEORGE GEORGE K, VICE PRESIDENT:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 16.02.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2016-17.

2. The grounds raised read as under:

1. *The order of the Commissioner of Income tax (Appeals) - 19 is contrary to law, facts and circumstances of the case.*
2. *The Commissioner of Income tax (Appeals) erred in deciding the appeal ex parte without giving an opportunity to the Appellant*
3. *The Commissioner of Income tax (Appeals) ought to have appreciated that*
 - (a) *Bhavya Marketing has approached the Interim Board of Settlement (IBS) seeking settlement of the matters based on the show cause notice.*
 - (b) *However, IBS has not entertained this petition. In respect of this Bhavya Marketing approached the Honorable High Court of Madras in a WRIT (group matter) pursuant to which the Honorable High Court of Madras directed that the assessee's application to IBS be considered. Thus, effectively the matter is pending before the IBS.*
4. *When the matter is before IBS, the order levying penalty is premature and invalid.*
5. *Without prejudice to the above,*
 - 5.1 *The Commissioner of Income tax (Appeals) erred in confirming the action of the Assessing officer in levy of penalty u/s.271(1)(c) of Rs.3,93,50,124/- based on the addition made in the assessment order on the difference between income per return and the claims by the Partners.*
 - 5.2 *The Commissioner of Income tax (Appeals) ought to have appreciated that loose sheets containing certain information purportedly claims made by warring partners seeking resolution for ongoing dispute and the partner groups have prepared their version of financial statements setting out their expectations from the settlements from the firm.*
 - 5.3 *It is submitted that two balance sheets found, the Appellant has only a rough balance sheet, it may be seen the compilation of data contained in these balance sheets is so raw that even the opening balance themselves varying.*
 - 5.4 *The Commissioner of Income tax (Appeals) ought to have appreciated that the additions were made on arbitrary basis without any corroborative evidence, therefore the addition cannot be attributed to concealment of income u/s.271(1)(c) and hence penalty levied be deleted.*
6. *The Appellant craves leave to file additional grounds of appeal at the time of hearing.*

3. Brief facts of the case are as follows:-

The assessee is a firm engaged in the business of dealership of cement distribution. There was search u/s. 132 of the Act on 21.02.2019 in the group cases of Shri Danda Brahmanadam, Shri Javvaji Ramanjeneyulu and others. Pursuant to the search of the said group, business premises of the assessee were also subjected to search u/s. 132 of the Act. The AO on the basis of material seized during the course of search issued notice u/s.153C of the Act on 03.02.2021. The assessee in response to the said notice filed its return of income on 15.04.2021 admitting total income of Rs.8,83,880/-. The AO completed the assessment proceedings u/s.144 r.w.s 153C of the Act vide order dated 29.09.2021 by making addition of Rs.11,36,07,694/-. The AO in the assessment completed, initiated penalty proceedings u/s.271(1)(c) of the Act and issued notice on 29.09.2021 for concealment of income. Since there was no response from the assessee side to the notice issued, the AO levied penalty u/s.271(1)(c) of the Act vide order dated 01.04.2022 amounting to Rs.3,93,50,124/- (being 100% of the tax sought to be evaded).

4. Aggrieved by the imposition of penalty u/s.271(1)(c) of the Act, the assessee filed appeal before the First Appellate Authority. During the course of appellate proceedings, the CIT(A) issued five

notices directing the assessee to file its written submissions / documentary evidences in support of its case. Since there was no response to the same, the CIT(A) dismissed the appeal of the assessee and confirmed the imposition of penalty u/s.271(1)(c) of the Act.

5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The Id.AR submitted that the assessee has filed an application before the Settlement Commission and the Hon'ble High Court of Madras vide judgment dated 17.11.2023 in a batch of cases (in which assessee also a party) in Writ Petition No.24537 of 2023 stated that all settlement applications in respect of the petitioners even in respect of the cases arising between 01.02.2021 to 31.03.2021 shall be deemed pending applications for the purpose of consideration by the Interim Board of Settlement. It was submitted by the Id.AR that in light of judgment of the Hon'ble High Court of Madras, the case of the assessee for the assessment years 2013-14 to 2019-20 is pending before the Interim Board of Settlement and by virtue of section 245F(2), the Interim Board of Settlement has exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under this Act in case of the respective years. The Id.AR

placed on record the judgment of the Hon'ble Jurisdictional High Court dated 17.11.2023. Finally, it was concluded by the Id.AR since the Interim Board of Settlement had issued notice and the proceedings before it commenced, hence the imposition of penalty and the disposal of appeal by the CIT(A) is pre-mature. Therefore, it was contended that the matter may be remanded to the AO who could await the final verdict of the Interim Board of Settlement and could act accordingly.

6. The Id.DR on the other hand submitted that when penalty has already been imposed, the Interim Board of Settlement may not have jurisdiction to waive the penalty u/s.271(1)(c) of the Act.

7. We have heard rival submissions and perused the material on record. The assessee had filed an application before the Settlement Commission (SA No.TN/CN 52/2020-21/53/IT) on 17.11.2021 for the assessment years 2013-14 to 2019-20. The said application was filed by the assessee in response to the relaxation by the CBDT order u/s.119(2)(b) of the Act vide F.No.299/22/21-Dir.Inv.III dated 28.09.2021. As per the said order, one time relaxation was given to applications filed by the assesseees who were eligible to file settlement applications as on 31.01.2021. However, the Interim

Board of Settlement by its order u/s.245D(4) dated 31.07.2023, rejected the said application stating that there was no case pending as on 31.01.2021 within the meaning of section 245C(1), 245A of the Act and CBDT instruction F.No.299/22/2021-Dir-Inv-III dated 28.09.2021 wherein cases pending as on 31.01.2021 were considered eligible to file a settlement application.

8. Aggrieved by the order u/s.245D(4) of the Interim Board of Settlement, the assessee firm had filed a writ petition before the Hon'ble High Court of Madras (W.P. No.24537 of 2023) on 21.08.2023. The Hon'ble High Court vide judgment dated 17.11.2023 (for similar cases including the case of the assessee) held that all the applications in respect of the petitioners even in respect of the cases arising between 01.02.2021 to 31.03.2021 shall be deemed be pending applications for the purposes of consideration by the Interim Board. Thus, by virtue of the order of the Hon'ble High Court dated 17.11.2023, the case of the assessee firm for the assessment years 2013-14 to 2019-20 are pending before the Interim Board. Further, as per Section 245F(2) of the Act, the Interim Board has exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under this Act in relation to the case for the respective years.

9. At present, the matter is pending before the Interim Board of Settlement. In the recent proceedings, the matter was heard by the Interim Board of Settlement and has ordered for a joint verification of seized material u/s.245D(3) of the Act vide their letter dated 18.10.2024. In regard to which the assessee's firm has already submitted its response dated 13.12.2024. In this background, we are of the opinion that the levy of penalty by the AO and disposal of matter by the CIT(A) is pre-mature. Hence, we restore the order imposing penalty to the files of the AO, who could await the final verdict of the Interim Board of Settlement and act accordingly. It is ordered accordingly.

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

Order pronounced in the open court on 20th December, 2024 at Chennai.

Sd/-
(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 20th December, 2024

RSR

Sd/-
(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.