

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

BEFORE MS. KAVITHA RAJAGOPAL, JM
AND
SHRI. OMKARESHWAR CHIDARA, AM

ITA No. 4896/Mum/2024
(Assessment Year: 2006-07)

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| Kalpna Kannangath Kutty Flat No. 4506, 45 th Floor, Tower 4, Crescent Bay, Jerbai Wadia Road, Parel, Mumbai – 400012. | Vs. | Assistant Commissioner of Income Tax Circle – 112(1), Mumbai Aayakar Bhawan, M. K. Road, Mumbai – 400020. |
| PAN/GIR No. AGIPK4160H | | |
| (Assessee) | : | (Respondent) |

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| Assessee by | : | Ms. Rutuja Pawar (Virtually Present) a/w. Ms. Sneha More |
| Respondent by | : | Ms. Sudha Ramachandran, Sr., DR |

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| Date of Hearing | : | 14.11.2024 |
| Date of Pronouncement | : | 24.12.2024 |

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals), Delhi ('ld. CIT(A)' for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2006-07.

2. The assessee has raised the following grounds of appeal:

“1) That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in upholding the infructuous penalty of Rs. 5,89,279/- wrongly levied for A.Y. 2006-07.

2) That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in considering the penalty order dated 29.03.2012 passed by Ld. AO prior to passing of assessment order u/s. 143(3) which is dated 19.12.2008.

3) *That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in not considering Section 275 of the Act.*

4) *That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in ignoring the issues and addition made in the assessment order for A.Y. 2006-07 that do not pertain to the impugned penalty order passed by the Id. AO making it infructuous.*

5) *That the impugned order being contrary to law, evidence and facts of the case may kindly be set aside, amended and modified in the light of the grounds of appeal enumerated above and the appellant be granted such relief as is called for on the facts and in the circumstances of the case of the appellant and in law.*

6) *That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.*

7) *That the appellant craves leave to reserve to himself the right to add, to alter or amend any of the grounds of appeal before or at the end of the hearing and to produce such further evidence, documents and papers as may be necessary.”*

3. Brief facts of the case are that the assessee is an individual and engaged in the business of film production and consultancy in the name of M/s. The K. Film Company. The assessee had filed her return of income on 30.10.2006, declaring total income at Rs. 6,89,412/- as income from house property, income from profession, business income and income from other sources and the same was processed u/s. 143(1) of the Act, where the demand of Rs. 34,970/- was raised by the CPC. The assessee's case was selected for scrutiny and notice u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee.
4. The learned Assessing Officer ('Id. AO' for short) then passed the assessment order u/s. 143(3) of the Act dated 19.12.2008, determining total income at Rs. 36,26,173/- after making certain additions/disallowances. The Id. AO initiated penalty proceedings u/s. 271(1)(c) of the Act for concealment of particulars of income by furnishing inaccurate particulars of income, thereby levying the penalty amounting to Rs. 5,89,279/- for

income of Rs. 17,69,637/- which was sought to be evaded. The ld. AO passed the penalty order u/s. 271(1)(c) of the Act dated 29.03.2012.

5. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 25.08.2024 passed an ex parte order, thereby upholding the penalty levied by the ld. AO on the ground that the assessee has not made compliance inspite of several opportunities.
6. The assessee is in appeal before us, challenging the impugned order of the ld. CIT(A).
7. The learned Authorized Representative ('ld. AR' for short) for the assessee contended that the penalty was initiated for A.Y. 2006-07 but the ld. AO proceeded to levy penalty on the addition made for A.Y. 2007-08 on the issue of TDS amounting to Rs. 17,50,681/- which was disallowed u/s. 40(a)(ia) of the Act. The ld. AR further stated that the notice u/s. 274 r.w. 271 was dated 30.11.2008, whereas the assessment order for A.Y. 2007-08 was passed on 19.12.2008 which implies that penalty was initiated much before the passing of the assessment order. The ld. AR further contended that the penalty levied by the ld. AO has no nexus to the addition made in the assessment order for A.Y. 2006-07. The ld. AR submitted that the assessment for A.Y. 2007-08 has already been settled and partly allowed by the ld. CIT(A), vide order dated 29.04.2016 and prayed that the penalty levied by the ld. AO on irrelevant facts are to be quashed as infructuous.
8. The learned Departmental Representative ('ld. DR' for short) on the other hand had nothing to controvert.

9. We have heard the rival submissions and perused the materials available on record. It is observed from the penalty order that penalty of Rs. 5,89,279/- which is a subject matter of the appeal pertains to A.Y. 2006-07 and on perusal of the assessment order for A.Y. 2006-07 dated 19.12.2008, the quantum of addition specified by the Id. AO in the penalty order amounting to Rs. 17,50,681/- is nowhere mentioned in the assessment order for A.Y. 2006-07. Further, on perusal of the assessment order dated 30.11.2009 for A.Y. 2007-08, there has been addition made u/s. 40(a)(ia), amounting to Rs. 17,50,681/- and Rs. 29,23,395/- towards non deduction of tax and short deduction of tax. Even otherwise, assuming that the said penalty order is levied for A.Y. 2007-08 which assessment was concluded on 30.11.2009, the notice u/s. 274 r.w. 271 as per the penalty order was issued on 30.11.2008 which was much prior to the assessment order of A.Y. 2007-08. It is also evident that the notice of demand for A.Y. 2006-07 specifies the quantum of penalty to be Rs. 5,89,279/-. It is observed that there has been a gross negligence on the part of the Id. AO in levying the penalty u/s. 271(1)(c) of the Act on extraneous facts which does not pertain to the impugned order.
10. The First Appellate Authority has also dismissed the appeal filed by the assessee without getting into the facts of the case and neither was it a speaking order were the Id. CIT(A) has failed to discuss these facts. There is no iota of doubt that the Id. AO has erred in levying penalty in the assessee's case in a very mechanical manner by taking into consideration the addition made in A.Y. 2007-08. Even on the merits, the Id. AO has failed to record proper satisfaction as to which limb the penalty has been levied i.e., whether for concealment of income or for furnishing inaccurate particulars of income.

It is settled proposition of law that the Id. AO should be precise in stating the grounds for which the penalty is levied. It is also evident that the direction to initiate penalty proceedings should be clear and without ambiguity as contemplated in Section 271 of the Act. The reason for initiating penalty proceeding should be discernable from the facts emanating from the assessment order which should no doubt give the assessee a clarity as to why penalty proceeding was initiated. In the present case in hand, there has been a gross violation of the requirement of the provisions of the Act. For the above-mentioned reasons, we deem it fit to direct the Id. AO to delete the impugned penalty levied.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 24.12.2024

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 24.12.2024
Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai