

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

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

ITA No.1331/Bang/2024
Assessment Year: 2013-14

Sri Jayappa Reddy No.1, Cholanayakanahalli R.T. Nagar Bangalore 560 032 PAN NO : AGAPJ9691E	Vs.	PCIT Bengaluru-1 Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Sri Prathik, A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	19.12.2024
Date of Pronouncement	:	23.12.2024

O R D E R

PER PRAKASH CHAND YADAV, JUDICIAL MEMBER:

Present appeal of the assessee is arising from the order of Id. PCIT dated 26.3.2024 and relates to assessment year 2013-14 having DIN & Order No.ITBA/REV/F/REV5/2023-24/1063410541(1).

2. There is a delay of 48 days in filing of this appeal. Id. Counsel for the assessee while pointing out the reason for delay has drawn the attention of the bench towards the affidavit of the assessee and pointed out that the order issued u/s 263 of the Act was never served upon the assessee either physically or electronically and hence, the present appeal has been filed with a delay of 48 days.

3. The Id. D.R. could not seriously object to the condonation of delay.

4. Considering the fact that it is a case of ordinate delay of 48 days, we hereby condone the delay in the interest of justice and proceed to decide the matter.

5. Brief facts of the case are that the assessee is an individual, has received an amount of Rs.1,05,00,000/- as sale consideration vis-à-vis sale of TDR from one builder during the year under consideration. The assessee has sold the TDR to that builder. The assessee could not file any return of income, believing that the amount received on the sale of TDR is not taxable. However, the assessee received a notice from the income tax investigation wing on 5th October, 2015. The investigation wing asked the assessee about the disclosure of this amount, received as sale consideration in respect of TDR. The assessee vide letter dated 13.10.2015 responded to the investigation wing that the assessee was under bona-fide belief not to treat this amount as his income. Before Investigation wing the assessee further submitted that the assessee has realized that this amount is taxable and hence, the assessee is filing his return of income as well as depositing the requisite tax. The assessee has also deposited an amount of Rs.17,26,200/- as tax with respect to the gain accrued to the assessee in respect of the sale of TDR.

5-A. Thereafter, on 31.3.2021 proceedings u/s 148 of the Act have been initiated against the assessee asking the assessee to file the return of income. The assessee in response to the notice issued u/s 148 of the Act electronically filed its return of income declaring the same income as it was declared before the investigation wing. Thereafter, the AO completed the assessment of the assessee at returned income and also initiated penalty u/s 271F of the Act for not filing the return of income within the time limit provided in section 139(1) & 139(4) of the Act.

5.1 On examining the case record of the assessee, the ld. PCIT observed that the ld. AO has not initiated penalty u/s 271(1)(c) of the Act. The ld.

PCIT was of the view that the assessee is guilty of concealment of income and hence, the AO ought to have initiated the penalty proceedings u/s 271(1)(c) of the Act. The ld. PCIT was of the view that the order of AO is erroneous and prejudicial to the interest of revenue. The ld. PCIT issued show cause notice to the assessee to file reply of the assessee on 4.3.2024. In response to the notice of ld. PCIT, the assessee filed its reply on 15.3.2024 and pointed out that there is no concealment or furnishing of inaccurate particulars by the assessee, therefore, the order of AO was justified in the eyes of law. However, the ld. PCIT could not find any force in the arguments of the assessee and dismissed the contentions and declared the order of AO as erroneous and prejudicial to the interest of revenue.

6. Aggrieved with the order of ld. PCIT, the assessee has come up in appeal before us and contended that it is not a case of furnishing of inaccurate particulars as well as concealment of income and hence the AO was justified in not initiating the penalty proceedings u/s 271(1)(c) of the Act. Counsel for the assessee contended that it is not a mistake of AO for not initiating the penalty under section 271(1)(C) rather a conscious decision as evident from the fact that the AO has levied penalty under section 271-F of the Act.

7. The ld. D.R. appearing on behalf of the revenue relied upon the judgment of CIT Vs. Surendra Prasad Aggrawal reported in 275 ITR 113 (All.) and contended that in that case also the Hon'ble High Court of Allahabad has affirmed the jurisdiction u/s 263 of the Act in a case where penalty was not initiated by the AO.

8. We have heard the rival submissions and perused the materials available on record. We observe that in this case, the assessee has deposited the amount of tax on **30.6.2015** which means the assessee has already deposited the requisite tax much before the action of issuing notice u/s 148 of the Act. Further, the AO while completing the assessment

proceedings has also not made any addition and has accepted the returned income of the assessee. Therefore, we are of the view that the AO has consciously taken a decision not to levy penalty u/s 271(1)(c) of the Act. It is further relevant to note that the ld. AO has initiated the penalty proceedings u/s 271F of the Act. We further note that provisions of section 271(1)(c) of the Act are not mandatory and automatic provision as held by so many courts. Further, in this case, no addition has been made by the AO to the returned income as evident from the assessment order. Therefore, we are of the view that the decision of the AO not to initiate penalty proceedings is a plausible view and hence, the action of the ld. PCIT u/s 263 of the Act is not justifiable. We allow the appeal of the assessee and quash the proceedings u/s 263 of the Act.

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

Order pronounced in the open court on 23rd Dec, 2024

Sd/-
(Prashant Maharishi)
Vice President

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bangalore,
Dated 23rd Dec, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.