

आयकरअपीलीयअधिकरण, चण्डीगढ़ न्यायपीठ "ए" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंहयादव , लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 843/Chd/2024
निर्धारण वर्ष / Assessment Year : 2016-17

AL Rasheed Charitable Society Islamia School Jagadhri, Yamunanagar-135003, Haryana	बनाम	The JCIT , Exemptions Chandigarh
स्थायी लेखा सं. / PAN NO: AAAAA597H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Parikshit Aggarwal, C.A (Virtual)
राजस्वकी ओर से/ Revenue by : Shri Vivek Vardhan, Addl. CIT, Sr. DR for
Dr. Rohit Sharma, CIT, D.R

सुनवाई की तारीख/ Date of Hearing : 29/01/2025
उदघोषणा की तारीख/ Date of Pronouncement : 25/02/2025

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed before this Tribunal under section 253 of the Income Tax Act, 1961 (hereinafter referred to as Act) as and by way of second appeal. The assessee is aggrieved by order bearing number ITBA/NFAC/S/250/2023-24/1054714788(1) dated 28/07/2023 of CIT(A) under section 250 of the Act passed in First Appeal u/s 246A of the Act which is hereinafter referred to as the "**impugned order**". The relevant A.Y is 2016-17 and the corresponding previous year period is from 01/04/2015 to 31/03/2016.

2.

Factual Matrix

2.1 The Return of Income for the A.Y.2016-17 was filed by the assessee on 11.10.2016 at **Nil income** and the same was processed under section 143(1) of the Act. The case of the assessee was selected through **CASS for**

complete scrutiny. After the issue of statutory notices, the AO examined the details. The AO has completed the assessment u/s. 143(3) of the Act vide an order dated:21.12.2018 assessing the assessee as an **AOP** at the assessed total income of the assessee at **Rs.7,01,67,544/-** against the returned income of Rs. **Nil** after making the following additions/disallowances.

- i) Disallowance of expenditure claimed on maintenance of worship places amounting to Rs. 2,48,56,722/-.
- ii) Disallowance of expenditure Rs. 90,11,684/- out of total expenditure amounting to Rs. 1,80,23,368/-.
- iii) Addition of Rs. 3,58,80,358/- claimed as corpus fund.
- iv) Disallowance of depreciation claimed by the assessee amounting to Rs. 3,34,759/-.

Penalty proceedings u/s 271(1)(c) of the Act also came to be initiated by the AO in respect of additions/disallowances made of Rs.7,01,67,544/- by the AO by issue of a notice u/s. 271(1)(c) read with section 274 of the Act, dated: 20.12.2018. **The assessee did not respond to the penalty notice.** Therefore, the assessee was again provided an opportunity by the AO to present its case and Notice under section 274 r.w.s. 271 of the Act dated 21.06.2019 was sent to the assessee. Again, **the assessee did not respond to the said notice.** Therefore, the AO was satisfied that the assessee had furnished inaccurate particulars of its income to the tune of Rs. 7,01,67,544/- and thus it was a fit case for imposition of penalty u/s 271(1)(c) of the Act. Accordingly, the AO levied a penalty of Rs.2,16,81,771/- u/s.271 (1)(c) of the Act being **100%** of the tax sought to be evaded.

2.2 The aforesaid order u/s271(1)(c) of the Act bears No. ITBA/PNL/F/271(1)(c)/2019-20/1016582264(1) and is dated 28/06/2019.

2.3 The Assessee being aggrieved by the aforesaid penalty order of Ld. AO preferred first appeal before Ld. CIT(A) who by impugned order has sustained the order imposing penalty and has dismissed the appeal.

2.4 The assessee being aggrieved by the impugned order has filed appeal before this Tribunal and interalia has raised following grounds of appeal against the impugned order which are as follows in Form 36:

1. That on the facts, circumstances and legal position of the case, Worthy CIT(A), NFAC in Appeal No. CIT (A), Chandigarh-2/10248/2019-20 has erred in passing order dtd. 28.07.2023 in contravention of provisions of S. 250 of the Income Tax Act, 1961 (hereinafter referred to as "Act").

2. That on facts, circumstances and legal position of the case. Worthy CIT(A) has erred in confirming the action of Ld. AO of imposition of penalty u/s 271(l)(c) of Rs. 2,16,81,771/- in respect of addition/disallowances made by Ld. AO and then confirmed by Worthy CIT(A) of Rs. 7,01,67,544/-.

3. That on facts, circumstances and circumstances of the case, Worthy CIT(A) has erred in confirming the actions of Ld. AO of levying penalty of Rs. 2,16,81,771/-u/s 271(l)(c) even when the initiation of penalty and imposition thereof is completely vague and without specification of limb of s. 271(l)(c) for which the same has been initiated and also finally imposed.

4. That on facts, circumstances and legal position of the case, the impugned penalty order passed by the Ld. AO u/s 271(j)(c) and then by Worthy CIT(A) deserves to be quashed since the same have been passed without affording reasonable opportunity of being heard to the appellant.

5. That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.

3.

Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 29/01/2025 when Ld. AR appeared before us for and on behalf of the assessee and interalia contended before us that impugned order is passed in violation of the principles of natural justice in as much as no opportunity of being heard was afforded to the assessee before the impugned order was passed by the Ld. CIT(A). In addition to this it was brought to our notice that in so far as issue of **quantum assessment is**

concerned this Tribunal vide their order dt. 30/09/2024 in ITA No. 573/Chd/2023 in Assesse's own case has set aside the quantum assessment order of CIT(A) bearing No. ITBA/NFAC/S/250/2023-24/1054712149(1) dated 28/07/2023 and the matter is remanded back to CIT(A) for denovo adjudication. It was contended that entire basis of imposition of penalty has thus disappeared. Per contra Ld. DR has supported the impugned order of CIT(A) and has left the issue to be decided by this Tribunal according to law.

4. **Observations, findings and conclusions**

4.1 We now have to decide the legality, validity and propriety of the impugned order basis record of the case.

4.2 We observed that in Para 5.5 of the impugned order the Ld. CIT(A) has observed that “undisputedly the appeal filed by the assessee against the quantum addition has been dismissed by the CIT(A). The appellant has not offered any explanation and whatever he has stated, he has failed to prove it to be Bonafide and he has failed to prove that all the facts relating to the same and material to the computation of his total income have been disclosed by him. Therefore, the amount added or disallowed by the AO in computing the total income of the assessee shall, for the purpose of clause (c) of this sub section (1) of Section 271 be deemed to represent the income in respect of which particulars have been concealed.

4.3 Basis above we are of the considered opinion that foundational ground to impose penalty on the assessee is “Quantum Assessment Order” in which there was an addition “ which “addition” was sustained by the Ld. CIT(A) by dismissing the appeal the assessee **since this Tribunal**

vide order dt. 30/09/2024 (supra) has set aside the “Quantum Assessment Order” back to the file of CIT(A) for fresh adjudication on denovo basis, we see no logical reason to sustain the impugned order. Accordingly we set aside the “impugned order” and remand the case back to the Ld. AO to decide the issue of penalty a fresh after giving reasonable opportunity of hearing to the assessee. We desire meritorious disposal of the penalty issue and hope that before imposing penalty the material ingredients of Section 271(1)(c) is explained to the assessee so that they meet the allegation.

5.

Order

5.1 Resultantly, the impugned order is set aside and the appeal of the assessee is allowed as and by way of remand for fresh decision in accordance with law on denovo basis.

5.2 Appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court on 25/02/2025

Sd/-

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकारण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar