

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH " B "

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER AND  
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

I.T.A. No.1499/Bang/2013  
(Assessment Year : 2004-05)

Income Tax Officer,  
Ward 3(1), Bangalore.

... Appellant

Vs.

Shri Raffi Baig,  
No.198/1, Khwaja Mansion,  
Das Compound, Basavanagudi,  
Bangalore.  
PAN ABDPR 6537M

..... Respondent.

I.T.A. No.1541/Bang/2013  
(Assessment Year : 2004-05)  
(By Assessee)

Appellant By : Shri V. Srinivasan, C.A.  
Respondent By : Shri P.K. Srihari, Addl. CIT (D.R)

Date of Hearing : 21.1.2015.  
Date of Pronouncement : 27.2.2015.

**O R D E R**

**Per Shri Jason P. Boaz :**

These are two cross appeals, one by the assessee and the other by Revenue directed against the order of the Commissioner of Income Tax (Appeals)-II, Bangalore dt.5.8.2013 for Assessment Year 2004-05, in partly deleting the penalty levied under Section 271(1)(C) of the

Income Tax Act, 1961 (in short 'the Act'). Since the issues involved in these cross appeals are interconnected, they were heard together and are being disposed off by way of this common order.

2. The facts of the case, briefly, are as under :-

2.1 The assessee filed his return of income for Assessment Year 2004-05 on 16.11.2006 declaring income of Rs.1,82,000 and agricultural income of Rs.1,25,000. The case was taken up for scrutiny and the assessment completed ex-parte under Section 144 of the Act vide order dt.18.12.2006, wherein the income of the assessee was determined at Rs.28,07,000 in view of the following additions made to the returned income :-

(i) Unexplained cash credit : Rs.23,50,000.

(ii) Unproved Liability : Rs.1,50,000.

2.2 Aggrieved by the order of assessment for Assessment Year 2004-05 dt.18.12.2006, the assessee preferred an appeal before the CIT (Appeals) - VI, Bangalore. From the details on record it is seen that admittedly the assessee filed this appeal before the learned CIT(A)-VI, Bangalore belatedly; by about 11 months. In the meanwhile, the Assessing Officer, observing that there was no compliance to the notices issued to the assessee and also there being no evidence on record to establish that the assessee had filed an appeal before the CIT (Appeals) - VI, Bangalore against the order of assessment for Assessment Year 2004-05 dt.18.12.2006 within the time specified, took up the penalty proceedings initiated in the order of assessment by issue of notice under Section 274 r.w.s 271 of the Act dt.18.12.2006. The Assessing

Officer, observing that the assessee inspite of being offered a number of opportunities to show cause why penalty under Section 271(1)(C) of the Act should not be levied had not utilized these opportunities to come out with a satisfactory reply, proceeded to levy penalty of Rs.7,50,000 under Section 271(1)(C) of the Act; being the minimum penalty @ 100% of the tax sought to be evaded.

2.3 Aggrieved by the order dt.29.6.2007 wherein the Assessing Officer levied penalty of Rs.7,50,000 under Section 271(1)(c) of the Act for Assessment Year 2004-05, the assessee preferred an appeal before the CIT (Appeals) - VI, Bangalore. The learned CIT (Appeals) dismissed the assessee's appeal by order dt.2.12.2009.

2.4 The assessee being aggrieved by the order of the CIT (Appeals) - VI, Bangalore dt.2.12.2009 in the matter of levy of penalty under Section 271(1)(c) of the Act preferred an appeal before this Tribunal. The co-ordinate bench of this Tribunal vide its order in ITA No.7/Bang/2010 dt.21.5.2010 set aside the order of the learned CIT (Appeals) and restored the matter back to the file of the CIT (Appeals) to be disposed off afresh, along with the quantum appeal in the assessee's own case for Assessment Year 2004-05 which was also set aside to the file of the CIT (Appeals) for adjudication on merits by the decision of the co-ordinate bench in ITA No.1157/Bang/2009 dt.26.4.2010.

3. In the second round, the CIT (Appeals) - II, Bangalore heard both the assessee's appeals; against the order of assessment for Assessment Year 2004-05 dt.18.12.2006 as well as the order levying penalty under Section 271(1)(c) of the Act dt.29.6.2007; and in the impugned

order dt.5.8.2013 has sustained the penalty under Section 271(1)(c) of the Act in respect of the addition of Rs.5,00,000 and Rs.1,50,000 that were upheld in the quantum appeal. The learned CIT (Appeals) in the impugned order dt.5.8.2013, following her findings and conclusions therein, deleted the penalty levied in respect of an amount of Rs.18,50,000 that was deleted in the quantum appeal.

4. Aggrieved by the order of the CIT (Appeals) - II, Bangalore in respect of the issue of levy of penalty under Section 271(1)(c) of the Act for Assessment Year 2004-05 vide order dt.5.8.2013, both the assessee and revenue are in appeal before this Tribunal to the extent the impugned order of the learned CIT (Appeals) is against them.

4.1 In the assessee's appeal, the grounds raised are as under :-

" 1. *The orders of the authorities below in so far as levying penalty under Section 271(1)(c) of the Act against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

2. *The order levying penalty under Section 271(1)(c) of the Act, is bad in law in as much as, the Id. A.O. has neither reached any satisfaction nor has such satisfaction been recorded in the assessment order and consequently, the very initiation of proceedings under Section 271(1)(c) of the Act, is not in accordance with the requirements of section 271(1) of the Act and consequently, the order of penalty founded on the invalid initiation of penalty proceedings is liable to be cancelled.*

3. *The learned CIT (Appeals) is not justified in upholding the penalty under Section 271(1)(c) of the Act in respect of the following additions of Rs.6,50,000 sustained in appellate proceedings under the facts and in the circumstances of the appellant's case.*

|                              |                              |
|------------------------------|------------------------------|
| a) Unexplained cash credit : | <i>Rs.5,00,000.</i>          |
| b) Unproved liability :      | <i><u>Rs.1,50,000</u></i>    |
|                              | <i><u>Rs. 6, 50, 000</u></i> |

4. *The authorities below failed to appreciate that the appellant has neither concealed any income nor furnished inaccurate particulars of income to warrant levy of penalty and*

*therefore, the penalty levied under Section 271(1)(c) of the Act requires to be cancelled.*

*5. Without prejudice to the above, the penalty levied is highly excessive and liable to be reduced substantially.*

*6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

4.2 In Revenue's appeal, the grounds raised are as under :-

*"1. The order of the learned CIT (Appeals) is clearly opposed to law as far as the findings are perverse, contrary to the facts and circumstances of the case and hence not sustainable.*

*2. The CIT (Appeals) erred in deleting penalty under Section 271(1)(c) of the Act on addition of Rs.18,50,000 for the reasons elaborated in the grounds of appeal framed in simultaneous order of the CIT (Appeals)'s on quantum deletion, which are as under :*

*i) The CIT (Appeals) erred in deleting unexplained cash credits of Rs.18,50,000 merely on the basis of a chart showing sources of funds for clearing certain liabilities. The CIT (Appeals) ought to have remanded the matter to the A.O. for verification of the assessee's stand that the immediate sources for clearing these liabilities are as per the chart submitted with reference in the bank accounts of the assessee.*

*ii) The CIT (Appeals) erred in deleting the above addition without even mentioning the mode of clearing i.e. whether cash or in cheque or the relevant dates. From the appellate order it is clear that the assessee had not produced any books of accounts and in such circumstances the CIT (Appeals) ought to have upheld the additions.*

*iii) The CIT (Appeals) ought to have appreciated that the assessee had gained a long time of nearly 6 years and in that period the assessee could have prepared the books of accounts and produce them for verification instead of producing a self-serving chart for the sources of the funds."*

5.1 We have heard the rival contentions and perused and carefully considered the material on record. We have separately disposed off the quantum appeals in the case of this assessee preferred both by the assessee and revenue vide orders in ITA Nos.1498 & 1540/Bang/2013 dt. 27.2.2014. In the said order, we have restored and remanded the matter of assessment

for Assessment Year 2004-05 to the file of the Assessing Officer for fresh consideration of the details filed by the assessee before the learned CIT (Appeals) in respect of the issues of unexplained cash credits of Rs.23,50,000 and unproved liability of Rs.1,50,000 and to call for such details as may be required to complete the assessment thereon afresh, after affording the assessee adequate opportunity of being heard and to file details required and considering the same. The relevant portion of that order at para 7.6.2 is extracted and reproduced hereunder :

*" 7.6.2 From the above chart, it is seen that the assessee has sought to explain the availability of funds to the extent of Rs.23,50,000 for clearing the liabilities shown in the statement of affairs of the earlier financial year. From the material on record, it is clear that neither did the assessee or his A.R. appeared before the Assessing Officer nor were details whatsoever filed before the Assessing Officer leading to the assessment being completed ex-parte under Section 144 of the Act. In these circumstances, it was incumbent on the learned CIT(A) to have called for a report under Rule 46A of the IT Rules, 1962 or remand report under Section 250(4) of the Act from the Assessing Officer in respect of the details and evidences filed by the assessee in appellate proceedings and more so when huge relief was being allowed to the assessee. This action on the part of the learned CIT(A), in our opinion, is in clear violation of the principles of natural justice. We, therefore, are of the opinion that the interests of equity and justice will be served if the assessment for Assessment Year 2004-05 originally completed ex-parte under Section 144 of the Act due to non-compliance by the assessee is set aside in respect of the cash credits of Rs.23,50,000 and the matter restored to the file of the Assessing Officer for fresh consideration, inter alia, of the details filed by the assessee before the learned CIT(A) in appellate proceedings and adjudication thereon. In this regard, since the assessment on this issue is to be done afresh, the additions of Rs.5,00,000 and Rs.1,50,000 sustained by the learned CIT(A) for want of proof are also restored to the file of the Assessing Officer for fresh consideration and adjudication. The Assessing Officer shall be free to call for such details as may be required to complete the assessment of the matter remanded afresh and the assessee shall be afforded adequate opportunities to file details and submissions required; after consideration of which only the Assessing Officer shall complete the order of assessment. It is ordered accordingly."*

5.2 Section 271(1)(c) reads as under :-

*" Failure to furnish returns, comply with notices, concealment of income, etc.*

*271 (1) If the Assessing Officer or the Commissioner (Appeals) in the course of any proceedings under this Act, is satisfied that any person ---*

*(a) xxxx*

*(b) xxxx*

*(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or*

*(d) xxxxx*

*He may direct that such person shall pay by way of penalty, ---*

*(i) xxxx*

*(ii) xxxxx*

*(iii) in the cases referred to in clause (c) or clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits."*

A bear perusal of the sub-clause (iii) would indicate that penalty equivalent to three times of the taxes sought to be evaded by reason of the concealment or furnishing inaccurate particulars can be imposed. This penalty is to be computed on the addition which are being made in the income of the assessee apart from the one disclosed by him. As observed earlier, we have already set aside the addition made by the Assessing Officer for re-adjudication meaning thereby there is no amount upon which it could be said that the assessee had evaded the taxes. The addition if any, is to be determined by the Assessing Officer, only thereafter it is to be seen whether any penalty under Section 271(1)(c) of the Act can be imposed upon the assessee or not. With these observations, we set aside the impugned order

and leave it for the Assessing Officer to initiate or not the penalty under Section 271(1)(c) of the Act after assessment of the income.

6. In the result, the appeals of both the assessee and revenue are treated as allowed for statistical purposes only.

Order pronounced in the open court on 27<sup>th</sup> Feb., 2015.

Sd/-  
**(RAJPAL YADAV)**  
Judicial Member

Sd/-  
**(JASON P BOAZ)**  
Accountant Member

\*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore