

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE
BEFORE SHRI CHANDRA POOJARI , ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.259 & 260/BANG/2020
Assessment Year : 2014 - 15

Shri Gopalakrishna Karodi Subbanna, Jayanagar, Sullia, Kasaba, Dakshina Kannada-574 239. PAN - AHCPS 1738 G	Vs.	The Income Tax Officer, Ward-1, Puttur.
APPELLANT		RESPONDENT

Appellant by	:	Shri S Srinivas Kamath, C.A
Respondent by	:	Shri Priyadarshi Mishra, JCIT (DR)

Date of Hearing	:	01-12-2020
Date of Pronouncement	:	04-12-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals have been filed by assessee against separate orders dated 22/03/2019 passed by Ld. CIT (A), Mangalore for assessment year 2014-15 on following grounds of appeal:

“1. The Assessment order and CIT order are against the law, facts, figures and circumstances of the case. Rs.2,16,300/-

2. The authorities below erred in levying/confirming Penalty u/s 271(f)(c) without considering the facts of the case and not giving proper opportunity of being heard. Rs.2,16,300/-

3. The appellant craves leave to add, alter, delete or substitute any of the grounds urged above. For the above and other grounds and submission that may be urged at the time of hearing of the appeal. Rs.2,16,300/-

4. The appellant prays that this authority be pleased to allow the appeal and set aside the order of the Learned Assessing Officer and CIT order, or pass any such orders as this authority deems fit and proper on the facts and circumstances of the case in the interest of justice and equity. Rs.2,16,300/-

Total tax effect u/s 271(1)(c)- Rs.2,16,300/-

Brief facts of the case are as under:

2. Assessee is an individual deriving income from civil contract works. He filed his return of income for year under consideration on 01/04/2015 declaring total income of Rs.13,74,110/-. Case was selected for scrutiny in view of large cash deposits in assessee's SB account and mismatch in the figures of receipts, tax credit and turnover. The assessment was completed by order dated 30/11/2016 by assessing the income in the hands of assessee at Rs.7,00,000/-. Subsequently penalty proceedings under section 271(1)(c) and 271B of the Act were initiated.

3. Pursuant to show cause notice issued, assessee failed to respond or file any reply before Ld.AO. The Ld.AO thus pass the penalty orders by levying penalty of Rs.2,16,300/- under section 271(1)(c) for concealment of income and a sum of Rs.1,50,000/- under section 271B of the year to furnish audit report within stipulated time as required under section 44 BB of the Act.

4. Aggrieved by the penalty levied, assessee preferred appeal before Ld.CIT (A).

5. Ld.CIT(A) while considering the penalty under section 271 (1)(c) of the act observed that assessee had not disclosed the bank accounts which had credited of Rs.80,11,8000/-and Rs.28,90,093/-. It was noted that pursuant to such nondisclosure during assessment assessee had offered a sum of Rs.7 lakhs as income from the said unaccounted contract received. Assessee has submitted before Ld. CIT (A) that the said to accounts were inadvertently missed out and it was not a deliberate act. Ld.CIT(A) held this submission/explanation of assessee to be self-serving and upheld the levy of penalty under section 271(1)(c) of the Act.

6. While considering the appeal against penalty under section 271B, Ld.CIT(A) observed that assessee had not filed any material evidencing support of the claim that he was not well and was hospitalised. Ld.CIT(A) upheld the penalty levied under section 271(1) (c) of the Act.

7. Aggrieved by orders passed by Ld.CIT(A) assessee is in appeal before us.

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8. He submitted that assessee was a contractor registered with PWD Department of government of Karnataka. It was submitted by Ld.AR that, assessee had undertaken private contract, against

which amounts received were deposited in two accounts, which were inadvertently omitted for purposes of computation of income for relevant year under consideration. Ld.AR submitted that, during assessment proceedings assessee voluntarily agreed for addition of Rs.7 Lacks to the returned income for the inadvertent omission of accounts. He submitted that the said addition made by Ld. AO was on estimate basis and assessee has not appealed against the addition.

9. Ld.AR also submitted that the notice issued under section 274 of the act is defective inasmuch as the limb under which the penalty is initiated is not identifiable. He placed reliance on the decision of *Hon'ble Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory* reported in 359 ITR 565.

10. On the contrary, Ld.Sr.DR submitted that, the assessment order passed clarifies the initiation of penalty under both the limbs being concealment and filing of inaccurate particulars. He argued that primarily the penalty is initiated for concealment and while passing the penalty order, penalty is levied for concealment of income. He submitted that as both the limbs were initiated by Ld.AO and the assessment order, non-striking of is a relevant. Ld.Sr.DR relying on decision of *Hon'ble Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory* (supra), submitted that para 63 deals with various facets of notice under section 274 and circumstances when the notice issued could be considered to be bad. Ld.Sr.DR taking support of decision of *Hon'ble Karnataka*

High Court in CIT v. Manjunatha Cotton & Ginning Factory (supra), argued that the manner in which penalty has been initiated and levied in the present facts of the case is supported by view taken by *Hon'ble Court*.

11. We have perused submissions advanced by both sides in light of records placed before us.

12. One of the issues involved in this appeal is whether, Ld.AO without striking out one of the limb *i.e.* furnishing of inaccurate particulars of income or concealment of income can levy penalty under section 271(1)(c) of the act. Ld.AR is reliance on decision of *Hon'ble Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory* reported in 359 ITR 565 and observed that the notice issued by Ld.AO would be bad in law, if it did not specify which limb of Section 271(1)(c) the penalty proceedings is initiated *i.e.* whether for concealment of particulars of income or for furnishing of inaccurate particulars of income.

13. On perusal of the assessment order and the penalty order passed, we find strength in the argument advanced by Ld.Sr.DR. In the light of the fact stated hereinabove, admittedly assessee had not disclosed to bank accounts in which contract receipts were deposited. While passing penalty order, we note that penalty is levied for concealment as there was material on record to show that bank accounts contained undisclosed income of assessee. This fact is discernible from the assessment order. In the

assessment order Ld.AO initiated both the limbs, i.e; concealment and filing of inaccurate particulars. We therefore do not agree with the argument advanced by Ld.AR alleging the validity of notice issued under section 274 of the Act.

14. Coming to the merits of the case, Ld.AR submitted that, the amount added for nondisclosure of accounts is based on estimation. We note that during assessment proceedings a bank account came to the notice of assessee and the same was placed before Ld.AO. It is also noted that assessee filed revised balance sheet after reconciling/explaining the credits in the above said accounts. The assessment order was then passed after verifying all the details by making an addition on account of unaccounted contract receipts amounting to Rs.7 lakhs. By producing bank accounts, assessee had displaced the presumption that failure to return the correct income had arisen from any fraud or gross or wilful neglect. We also note that no specific addition had been made in the assessment order on this account. We do not find any discrepancy having noted by Ld.AO in respect of the 2 accounts except for the fact that assessee had not maintained accounts in respect of the 2 bank accounts declared subsequently.

15. Under such circumstances we do not find assessee to be liable for concealment under section 271(1)(c) as during assessment proceedings assessee demonstrated his bona fides.

Further assessee has also not filed any appeal against the addition made towards such bank accounts.

16. Thus the conduct of assessee deserves the penalty to be deleted.

Accordingly we allow grounds 1-4 raised by assessee.

In the result appeal filed by assessee stands allowed.

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17. Penalty is levied for delay in uploading the audit report within the due date.

18. Ld.AR submitted that the tax audit report to be filed by assessee for relevant year on or before 31/11/2014. However, due to ill health, the same was filed on 31/03/2015. It was submitted that assessee resides in village area where assessee did not had sufficient means to comply with the procedures. Ld.AR submitted that, the delay was not willful and requested for the penalty to be deleted.

19. On the contrary, Ld.Sr.DR supported the orders of authority below.

20. We have perused submission advanced by both sides and records placed before us.

21. It is noted that, time period for filing audit report was extended to 13/11/2014 for relevant period under consideration and therefore the delay in uploading the audit report was 3 months.

22. We note that there has not been assessee has never been held for such default in the preceding years as noted by Ld.AO. We also note that the reason submitted by assessee for the delay in filing of audit report was due to ill-health during the relevant period. There is nothing on record to prove anything contrary by revenue, to what has been submitted by assessee before authorities below or before us.

23. We do not find the conduct of assessee to be malafide under such circumstances. Ld.AO at the time of assessment proceedings had the benefit of audit report and therefore in our view levy of penalty should be liberally construed. We therefore do not find any reason to sustain the present penalty.

Accordingly grounds raised by assessee in this appeal stands allowed.

In the result appeal filed by assessee stands allowed.

Order pronounced in the open court on 4th Dec, 2020

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 4th Dec, 2020.
/Vms/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-12-2020		Sr.PS
3.	Draft proposed & placed before the second member	-12-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-12-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-12-2020		Sr.PS/PS
6.	Kept for pronouncement on	-12-2020		Sr.PS
7.	Date of uploading the order on Website	-12-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-12-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS