

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.815/Bang/2024
Assessment Years : 2016-17

Laxmilal Badolla, No.75, BTS Main Road, Sankul Pharma, Wilson Garden, Bangalore-560 030. PAN – ACIPB 2149 R	Vs.	The NFAC, Delhi. The Income Tax Officer, Ward - 2(2)(7), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Smt Suman Lunkar, C.A
Revenue by	:	Smt Neha Shaya, Addl CIT DR

Date of hearing	:	19.06.2024
Date of Pronouncement	:	24.06.2024

ORDER

PER SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER :

The present appeal of the assessee is arising from the order passed by the NFAC, Delhi dated 28/02/2024 in DIN No. ITBA/NFAC/S/250/2023-24/1061703738(1) for the assessment year 2016-17.

Fact of the case:-

2. The assessee is an individual and sold 2 properties during the year under consideration and received an amount of Rs.8,39,000/- in cash. The assessee filed its return of income on 7/8/2017. The return of income file by the assessee was processed u/s 143(1) on 8/9/2017. Thereafter, on 6/7/2021, the assessee received a notice u/s 271D of the Act. From the JCIT, Range-2(2), Bangalore proposing to initiate penalty proceedings under section 271D of the Act. During the course of penalty proceedings, the assessee offered his explanation before the NFAC and contended that there was a reasonable cause for accepting the amount in cash. However, the assessing authority could not find any force in the arguments of the assessee and levied penalty of Rs.8,39,000/- i.e. equivalent to the cash received by the assessee.

3. Aggrieved with the order of the AO (NFAC), the assessee filed appeal before the Id. CIT(A) and *interalia* contended that the penalty proceedings were initiated by the JCIT after a lapse of around 4 years, cannot be held to be in a reasonable time. The assessee further argued that there was bonafide reasons for the assessee for accepting the payments in cash from the buyers, who were unable to pay by way of account payee cheque or demand draft. The CIT (A) affirmed the levy of penalty.

4. Aggrieved by the order of the Id. CIT(A), the assessee filed appeal before us and raised 5 grounds of appeal.

5. The ground 5 is general in nature and in rest of grounds solitary issue involved in respect of the levy of penalty u/s 271D of the Act.

6. The Id. Counsel for the assessee has raised following arguments.

- a) The initiation of the penalty proceedings after the lapse of approximately 4 years is bad in law.
- b) no proceedings were pending against the assessee, which condition is *sine-qua non* for initiating
- c) The sale deed was executed by 2 other persons in favour of the seller after accepting cash. However, the revenue has not levied any penalty against the 2 other persons.
- d) Lastly the Id. Counsel for the assessee argued that the amendment restricting the sale of immovable property vide cash mode has been introduced w.e.f 7/6/2015 and this is very first year, in which this amendment has been made applicable. Therefore, the assessee was under bonafide belief that he can accept payments in cash.

7. The Id. DR relied upon the order of the authorities below.

8. After considering the rival submissions, we observe that in this case, the assessee has filed return of income on 07/08/2017 and this return was processed by the Department on 8/9/2017, impugned penalty notice dated 6/7/2021 was issued by department. Ld DR also failed to point out anything contrary to the facts of the case. Therefore, we are of the view that the penalty was not initiated by the revenue in reasonable time. A reference can be made to the judgment of Bangalore Bench in the case of Sree Rajendra Suri Gurumandir Trust in ITA No.751/Bang/2023 vide order dated 05.12.2013, wherein it is held as under:-

"3.2.1 Referring to the decision of the Cochin Bench of the Tribunal in the case of Noble Pictures vs. JCIT reported in 90 ITD 248, she submitted that the Tribunal in the said decision has held

that there should be a reasonable time within which penalty proceeding is to be initiated or to be completed. Even if a time is not prescribed under the law, however, the penalty cannot hang on the head of an assessee as sword of Damocles indefinitely and it should be initiated and completed within a reasonable time.

3.2.2 Referring to the decision of the Hon'ble Calcutta High Court in the case of Indian Handloom Textiles vs. ITO reported in 68 1TD 0560, she submitted that the penalty proceedings u/s 271B initiated 34 months after the completion of assessment was held to invalid. He accordingly submitted that since, in the instant case, the penalty proceedings have been initiated after a period of more four years, therefore, the penalty so levied by the Assessing Officer and upheld by the CIT(A) is not justified. She also relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs. NHK Japan Corporation reported in 305 ITR 132.

3.3 In the present case also, the assessee has filed return of income for the assessment year 2014-15 on 31.3.2017. There was no regular assessment and the return of income has been accepted as it is. In our opinion, copy of the return of income itself serve as an assessment order for all practical purposes. So the penalty proceedings has been initiated vide notice dated 21.12.2020, which is approximately after lapse of 45 months. Therefore, the penalty order passed by Id. AO u/s 272A(2)(e) of the Act is not within reasonable time.”

9. The assessee has further relied upon the order of Indore Bench in the case of 2) Shri Umakant Sharma in ITA Nos.364 to 366/Ind/2022 vide order dated 19.07.2023 for the proposition that there must be pendency of some proceedings before initiation of the penalty proceedings. We think it appropriate to reproduce the relevant findings of the coordinate bench:-

“11. Therefore, it is pre-requisite condition that the initiation of penalty 271D/271E of the Act, there must be assessment proceedings or proceeding arising from assessment order are pending in the case of the assessee. Accordingly in the facts and circumstances of the case and following the judgment of Hon'ble Supreme Court as well as Coordinate Bench of the Tribunal in

case of Vijayaben G. Zalavadia vs. JCIT (supra), we hold that the penalty levied u/s 271D of the Act without any assessment proceedings in the case of the assessee is not valid and liable to be quashed. We order accordingly.”

10. Further the Income Tax Laws are very complex laws, every year amendments have come, and sometime even professional commit many mistakes. Therefore having regard to the fact that this is the first year immediately after the introduction of amendment, coupled with the fact that the persons from whom payments were to be made could not be able to arrange the Demand Drafts, due to closing of banking hours. The assessee has also filed confirmations from the buyers who confirmed that they could not be able to get the Demand Draft due to restricted banking hours. Therefore, we are of the view that there was reasonable cause and explanation of the assessee would be treated as bonafide, hence in this case, no penalty is leviable as section 273B. Section 273B categorically excludes the operations of section 271D. Further reference can be made to the decisions of Hon'ble Delhi High Court in the case of Holland Tractors in ITA Number 182 of 2002 dated 25.09.2014, wherein the Hon'ble High Court observed as under:-

“The tax statutes are convoluted and complex and there can be manifold opinions on interpretation and understanding of a provision or the tax treatment. In such cases, even when the interpretation placed by the Revenue is accepted, penalty should not be imposed if the contention of the assessee was plausible and bona fide. Of course full facts should be disclosed. While applying the test of bonafide, we have to also keep in mind that even best of legal minds can have difference of opinion. It is not uncommon to have dissenting opinion on the question of law, in the courts”

11. Lastly, we observe that other persons have also received the cash in this very same transaction. However, they have been spared by the department without any plausible reasons. It is settled position of law that revenue cannot adopt the tactics of pick and choose while assessing the citizens of India, as it would be violative of Article 14 of the

constitution. Reference can be made to the decision of Hon'ble Apex Court in the case of UOI Vs Kaumudini Narayan Dayal reported in 249 ITR 219(SC).

11. In view of the above discussion, we delete the penalty and allow the appeal of the assessee.

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

Order pronounced in court on 24th day of June, 2024

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(SHRI PRAKASH CHAND YADAV)
Judicial Member

Bangalore,
Dated, 24th June, 2024

/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore