

## **Budnar Jayakar Shetty Vs Commissioner Of Income Tax Central Revenue Building, Queen's Road, Shivaji Nagar, Bengaluru - 560001 & Ors**

**Court:** Karnataka High Court At Bengaluru

**Date of Decision:** Feb. 5, 2025

**Acts Referred:** Income Tax Act, 1961 &" 271(1)(c), 274

**Hon'ble Judges:** Krishna S Dixit, J; G Basavaraja, J

**Bench:** Division Bench

**Advocate:** Mallarao, Dr. Sheetal Borkar, Ravi Raj Y. V, Dilip M

**Final Decision:** Allowed

### **Judgement**

Krishna S Dixit, J

1. This appeal seeks to call in question the Income Tax Appellate Tribunal's order dated 06th June, 2022 whereby the Assessee's appeal in

ITA/93/BANG/2022 for the Assessment Year 2016-2017, has been negatived affirming the penalty order passed by the Assessing Authority in

ITBA/PNL/F/271(1)(c)/2019-20/1019415571(1) dated 24th October, 2019.

2. A Co-ordinate Bench of this Court, vide order dated 19th June, 2023, had admitted the appeal on the following substantial questions of law:

i. Whether on the facts and in the circumstances of the case, the Tribunal had come to the right conclusion by rejecting the gist and

genuine submissions of the appellant, thereby rejected the claim of the appellant, is correct?

ii. Whether on the facts and in the circumstances of the case, the Tribunal is justified in upholding and confirming the order passed by the

lower authority?

iii. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in ignoring the materials placed on record, and

the submissions made in support of the Appellant's claim and upholding the order of the lower authority, is correct?

iv. Whether in law, the Tribunal was justified in negating the appellant's view by simply rejecting the claim and wrongly relying upon the

cited judgments, is correct?

v. Whether on the facts and in the circumstances of the case, the findings recorded by the Tribunal in the context of accepting the

observations of the Ld. CIT(A), is vitiated on account of the issue being considered on surmise and conjectures and not on the basis of the

material on record?

3. After service of notice, the Revenue having entered appearance through its Senior Panel Counsel, vehemently resists the appeal contending that

subject questions of law would not arise as most of them are not questions of law at all.

4. Learned Counsel appearing for the Assessee, with the leave of the Court, raised another substantial question of law on the basis of material on

record, as under:

Whether the penalty order dated 24th October, 2019 could have been entered when the show-cause notice dated 24th October, 2019 itself had fixed

the date on 08th November, 2019 as date of appearance for offering explanation?

This question was read out to the learned Panel Counsel for the respondent-Revenue, who in all fairness, agreed to proceed with the matter without

seeking any adjournment.

5. Having heard the learned Counsel for the parties and having perused the appeal papers, we are inclined to grant indulgence in the matter inasmuch

as the Notice dated 24th October, 2019 issued under Section 274 r/w Section 271(1)(c) of the Income Tax Act apparently had fixed date 08th

November, 2019 for showing the cause as to why penalty proceedings should not be taken up under Section 271(1)(c). However, a perusal of the

penalty order that was impugned before the Tribunal would show that it was made on 24th October, 2019, i.e. the day on which the show-cause notice

was issued fixing 08th November, 2019 as a date of hearing. Thus, there is a gross violation of principles of natural justice that would warrant

invalidation of the penalty order and the order of the Income-tax Appellate Tribunal affirming it, by answering the subject substantial question of law,

in favour of the Assessee.

In the above circumstances, this appeal succeeds. The Penalty Order dated 24th October, 2019 and the Income-Tax Appellate Tribunal's Order

dated 06th June, 2022 which has confirmed it, are set aside. Matter is remanded to the portals of the Assessing Authority for consideration afresh,

after giving a reasonable opportunity of hearing, again to the Appellant-Assessee. All contentions of the parties are kept open.

Costs made easy.