



ITA No.5656/M/2015
Chandulal P.Shah (HUF)
Assessment Year-2007-08

आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.5656/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2007-08)

Chandulal P.Shah (HUF) Eastern Chemicals, 6th Floor 601-B, Morya Landmark-II Oshiwara Link Road Opp. Infinity Mall Andheri (West), Mumbai-400 053	बनाम/ Vs.	Assistant Commissioner of Income Tax-20(1) Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABHC-3234-M		
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Paresh Shaparia, Ld. AR
Revenue by	:	Rajat Mittal, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	27/09/2017
घोषणा की तारीख / Date of Pronouncement	:	04 /10/2017

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. By way of instant appeal, the assessee has contested confirmation of levy of penalty u/s 271(1)(C) for Rs.6,98,797/- by Ld. Commissioner of Income Tax (Appeals)-36 [CIT(A)], Mumbai Appeal No. CIT(A)-31/IT-



44/ACIT 20(1)/13-14 dated 19/10/2015. The impugned penalty was levied by *Ld. Assistant Commissioner of Income Tax-20(1), Mumbai [AO]*, vide order dated 28/03/2013. In the original grounds, the assessee has contested the penalty on merits. However, the assessee, vide letter dated 27/09/2017, has raised additional grounds of appeal which contest imposition of penalty on legal grounds. Since, the same are legal grounds and goes to the root of the matter and also do not require appreciation of new facts, the same are taken on record and dealt with at the outset.

2.1 Facts leading to the imposition of the penalty are that the assessee being *resident HUF* was assessed for impugned AY u/s 143(3) on 29/12/2009 at Rs.75,06,430/- as against returned income of Rs.50,68,238/- *e-filed* by the assessee on 29/10/2007. The assessee, *inter-alia*, suffered additions / disallowances on account of *retainer-ship payment, commission payment and advances written off* aggregating in all to Rs.23,29,324/- against which the penalty proceedings were initiated in the quantum assessment order. The quantum additions have since been confirmed, first by *Ld. first appellate authority* and thereafter by this Tribunal.

2.2 In the meanwhile, the penalty proceedings were initiated and the finally the assessee has been saddled with penalty of Rs.6,98,797/- vide *Ld. AO* order dated 28/03/2013 where the assessee contended that mere disallowance done not attract penalty. However not convinced, *Ld. AO* imposed the impugned penalty which was further contested without any success before *Ld. CIT(A)* vide impugned order dated 19/10/2015. The *Ld. CIT(A)* confirmed the penalty by finding that the assessee could



not furnish any satisfactory explanation against the quantum addition or could not substantiate the explanation given. Aggrieved, the assessee is in further appeal before us.

3. The Ld. Counsel for Assessee [AR], first of all, contested the penalty proceedings on legal grounds by drawing our attention to lack of satisfaction by Ld. AO *qua* initiation of penalty in the quantum assessment order. The Ld. AR further drew our attention to *show-cause* notice u/s 274 read with Section 271 dated 29/12/2009 and contended that the appropriate *clause & limb* has not been *ticked-off* in the notice and therefore, the same reflects non-application of mind on the part of AO and the AO himself was not sure about the limb / exact charge for which the assessee was being penalized. Therefore, the penalty order stood vitiated on legal grounds and hence, need to be quashed. Reliance has been placed on various judicial pronouncements for this contention.

4. *Per contra*, the Ld. Departmental representative placed reliance on Section 271(1B) to contend that mere direction for initiation of penalty in the assessment order constitute deemed satisfaction of the Ld. AO and since these directions were already given in the present case, the penalty proceedings were valid in all respect and therefore, the same need to be confirmed particularly when quantum assessment has already been upheld by the Tribunal.

5. We have carefully heard the rival contentions and perused relevant material on record. A perusal of the quantum assessment order reveals that the assessee has suffered additions of varied nature as discussed by Ld. AO from *para-3 to para-7*. However, the penalty has nowhere



been initiated by Ld. AO against these additions. Only in the last *para-9*, the Ld. AO has stated that '*Issue notice u/s. 271(1)(c) of the I.T.Act, 1961.*' Further, a perusal of *show-cause notice dated 29/12/2009* issued u/s. 274 read with *Section 271* reveals that the appropriate charge has not been *ticked-off* and further, the relevant limb i.e. '*have concealed the particulars of your income or furnished inaccurate particulars of such income* have not been *marked* by Ld. AO. Finally, a perusal of penalty order reveals that penalty has been levied by Ld. AO by observing that '*under these circumstances, it is therefore held that the assessee has deliberately and consciously attempted to concealed its income by way of furnishing inaccurate particulars of income within the meaning of Section 271(1)(C) of the I T Act 1961.*

6. Upon combined reading of aforesaid facts, we find strength in the legal grounds raised by Ld. AR because of few reasons. First of all, penalty proceedings are nowhere initiated by Ld. AO in the quantum assessment order and the same contains a mere direction to issue appropriate notice which is a procedural requirement and therefore Section 271(IB) could not help revenue in any manner. Secondly, it is well settled legal position that *furnishing of inaccurate particulars of income* and *concealment of income* carry different connotations and constitute two different limbs. The same also becomes clear from the language of show-cause notice which states that the assessee has '*concealed the particulars of income*' or '*furnished inaccurate particulars of income*'. Finally, the penalty has been levied for deliberate concealment of income by way of furnishing of inaccurate particulars of income. These facts reveal inconsistent thinking on the part of Ld. AO.



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Undisputedly, the AO was required to specify the exact charge for which the assessee was being penalized which he has failed to do so and the same has resulted into taking away assessee's valuable right of contesting the same and thereby violates the principles of natural justice.

7. Our view is fortified by the judgment of Hon'ble Supreme Court rendered in *Dilip N.Shroff Vs. JCIT (291 ITR 519)* wherein the Hon'ble Court has observed that the concealment of income and furnishing of inaccurate particulars of income are different. The Hon'ble Court further held that non-striking off of the relevant portions of standard show-cause notice reflects non-application of mind by AO and hence vitiates the penalty. We also find that the ratio of this case was very much relevant and valid despite the judgment of Apex Court in the case of *CIT Vs. Dharmendra Textile Processor (306 ITR 277)* in view of another judgment of Supreme Court in *CIT Vs. Reliance Petro products Pvt. Ltd. [322 ITR 158]* wherein it was observed that reasoning given in the case of *Dilip N.Shroff* could not be faulted except to the extent of observations regarding necessity of *mens-rea* for the purpose of Section 271(1)(C).

8. Similar view has been taken by Hon'ble Karnataka High Court in *CIT Vs. Manjunatha Cotton & Ginning Factory [2013 359 ITR 565]* which was later followed by the same court in *CIT Vs. SSA's Emerald Meadows [ITA NO. 380 OF 2015 23/11/2015]* against which special leave petition [SLP] filed by the revenue before Apex Court in *CC No.11485/2016 order dated 05/08/2016* was dismissed by the Hon'ble court, finding no merits in the case. Further, Hon'ble Bombay High Court has followed the ratio of same judgment in *CIT Vs. Shri Samson Perinchery [ITA No. 1154 of 2014 order dated 05/01/2017]* and further



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Tribunal, in catena of judgment and more particularly in *Wadhwa Estate & Developers Vs. ACIT [ITA NO. 2158/Mum/2016 dated 24/02/2017]* & *Jehangir HC Jehangir Vs. ACIT [ITA No. 1261/Mum/2011 17/05/2017]* has taken the same view following the aforesaid judgments.

9. Further, in the case of *CIT Vs. Smt. Kaushalya [216 ITR 660 14/01/1992]*, the Hon'ble jurisdictional High Court has observed that the notice issued under Section 274 must reveal application of mind by the Assessing Officer and the assessee must be aware of the exact charge on which he had to file his explanation. It was further observed that vagueness and ambiguity in the notice deprives the assessee of reasonable opportunity to contest the same.

10. Finally, viewed in the light of principles laid down in the judicial precedents discussed hereinabove, we are inclined to conclude that the penalty proceedings stood vitiated for want of principles of natural justice and hence liable to be quashed. Accordingly, we delete the same.

11. Since, we have deleted the penalty on legal grounds, the decision thereof on merits remain merely academic in nature and therefore, we do not find the necessity of delving into the same any further.

12. Resultantly, the assessee's appeal stands allowed in terms of our above order.

Order pronounced in the open court on 04th October, 2017.

Sd/-
(Saktijit Dey)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**



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आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**