



ITA.No.6651/Mum/2014
Shahnawaz Z.Khan
Assessment Year-2009-10

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

श्री डी.टी. गरसिया, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SHRI D.T. GARASIA, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.6651/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2009-10)

Shahnawaz Z.Khan A/104, Aero View Co-op.Hsg (Next to Sahara Hotel) LBS Road, Kurla (West) Mumbai-400 070	बनाम/ Vs.	Income Tax Officer 21(3)(2) Pratyakshakar Bhavan Bandra Kurla Complex, Bandra(E) Mumbai-400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AGZPK-9060-H		
(□ पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Prayag Jha, Ld.AR
Revenue by	:	V.Justin, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	21/12/2017
घोषणा की तारीख / Date of Pronouncement	:	17/01/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2009-10 contest the order of the *Ld. Commissioner of Income-Tax (Appeals)-32 [CIT(A)], Mumbai, Appeal No.CIT(A)-32/ITO21(3)(2)/IT-96/2012-13* dated 31/10/2013 *qua* confirmation of penalty u/s 271(1)(c) for Rs.24,42,722/-. The assessment for impugned AY was framed by *Ld.*



ITA.No.6651/Mum/2014
Shahnawaz Z.Khan
Assessment Year-2009-10

Income Tax Officer 21(3)(2) u/s 143(3) on 20/12/2011 whereas penalty u/s 271(1)(c) was levied vide order dated 26/06/2012. The assessee, in the quantum assessment u/s 143(3), was denied deduction u/s 54 and accordingly saddled with certain additions amounting to Rs.1,08,85,571/- against which the impugned penalty has been levied @100% of tax sought to be evaded. The same came to Rs.24,42,722/- which is the subject matter of this appeal.

2. The registry has noted that the appeal has been filed with a delay of 304 days, against which the assessee has filed condonation petition dated 03/11/2014 which is duly supported by the affidavit of the assessee. The assessee has explained the circumstances, which has led to the delay in filing the appeal. The assessee has attributed the delay to adverse medical conditions being faced by him and his family members. The Ld. Departmental Representative [DR] opposed the same on the ground that the assessee was required to satisfactorily explain each day's delay. After considering the rival contentions, bench formed an opinion that in the interest of justice and keeping in view the assessee's medical conditions which prevailed at the relevant time, the assessee deserved condonation of delay, however, upon payment of cost of Rs.5,000/-. The same has since been deposited by the assessee vide Bank *e-challan* No. 00901 dated 25/12/2017, BSR Code 0202976, a copy of which has been placed on record. Hence, the delay is condoned and we proceed further on the merits of the appeal.

3. Proceeding further, the Ld. Counsel for Assessee [AR], at the outset, drew our attention to additional grounds of appeal being filed by the assessee vide letter dated 21/12/2017 and pleaded that since the



same questions the validity of penalty proceedings and goes to the root of the matter and therefore, should be taken up first. After perusing the same, we find that the same are legal grounds and do not require appreciation of new facts and hence taken on record. The same reads as follows:-

On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in sustaining the penalty order without appreciating that the Learned A.O. had imposed penalty u/s. 271(1)(c) in a mechanical manner without specifying clearly the default of the assessee as to whether the assessee had concealed the particulars of his income or had furnished inaccurate particulars of such income, rendering the impugned penalty order bad in law liable to be cancelled.

4. The Ld. AR, taking us through quantum assessment order, *show-cause notice* and penalty order, contended that no specific charge has been mentioned by Ld. AO while levying penalty and therefore, the same being in violation of principle of natural justice, vitiates the penalty proceedings itself and hence liable to be quashed. Per *Contra*, Ld. Departmental Representative [DR] pleaded that the assessee was well aware of the charges for which he was being penalized which is quite evident from the fact that the assessee actively contested the penalty proceedings and never raised this issue before any of the lower authorities.

5. We have carefully heard the rival contentions and perused relevant material on record. Upon perusal of quantum assessment order, it is evident that penalty has been initiated by Ld. AO against quantum additions by making the following assertions:-

Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 is initiated for furnishing of inaccurate particulars of income and thereby concealing the income.



A perusal of the above shows that the Ld. AO has applied both the limbs simultaneously *i.e. concealment of income or furnishing of inaccurate particulars* for which the penalty was being initiated against the assessee. The aforesaid two limbs, as per settled legal pronouncements, carry different meaning and connotations. Proceeding further, a perusal of *show-cause* notice dated 20/12/2011 as placed on *page No. 4* of the *paper book* reveals that the Ld. AO has not only failed to mark the specific clause but also failed to strike-off / mark the appropriate charge. Finally, a perusal of penalty order dated 26/06/2012 reveals that the penalty has been levied for concealment of income by applying Explanation 1 to Section 271(1)(c). The three events, as stated above, put together, reveal that Ld. AO has failed to adhere to the settled legal propositions while imposing penalty on the assessee which is quite evident from certain legal judicial pronouncements as enumerated by us in the succeeding paragraph.

6. The Hon'ble Supreme Court in the judgment titled as *Dilip N.Shroff Vs. JCIT (291 ITR 519)* has observed that the concealment of income and furnishing of inaccurate particulars of income are different and carry different connotations. 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 note that the ratio of this judgment 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). Similar view has been expressed in the judgment of Hon'ble Karnataka High Court rendered 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 Tribunal, in catena of judgment and more particularly in *Wadhwa Estate & Developers Vs. ACIT [ITA NO. 2158/Mum/2016 dated 24/02/2017]* has taken the same view following the aforesaid judgments.

7. Upon consideration of factual matrix as noted by us in *paragraph 5*, we find that the three events, put together, 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 for want of principles of natural justice and hence, liable to be quashed. Respectfully following the catena of judgments on the issue favoring the assessee, we delete the impugned penalty and allow assessee's appeal.

8. Since the appeal has been allowed on legal grounds itself, the question of going into the merits of the case remains merely academic in nature and therefore, we find no reason to delve into the same.

9. Resultantly, the assessee's appeal stands allowed as above.



ITA.No.6651/Mum/2014
Shahnawaz Z.Khan
Assessment Year-2009-10

Order pronounced in the open court on 17th January,2018

Sd/-
(D.T. Garasia)
न्यायिक सदस्य / **Judicial Member**

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

मुंबई Mumbai; दिनांक Dated : 17.01.2018
Sr.PS:- Thirumalesh

आदेश की प्रतिलिपि □ त्रेषित/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