

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.1316/Mum/2019
(Assessment Year :2013- 2014)
&
ITA No.1317/Mum/2019
(Assessment Year :2014- 2015)**

Ms. Aditi Sunil Choksey 307, Jogani Industrial Estate J.R. Boricha Marg Off. N M. Joshi Marg Jacob Circle Mumbai – 400 011	Vs.	Income Tax Officer Ward 21(1)(1) Mumbai
PAN/GIR No. AAAPC9185C		
(Appellant)	..	(Respondent)

Assessee by	Shri Rajeev Khandelwal
Revenue by	Shri Michael Jerald
Date of Hearing	06/01/2020
Date of Pronouncement	15/01/2020

आदेश / ORDER

PER M. BALAGANESH (A.M):

These appeals in ITA Nos.1316/Mum/2019 & 1317/Mum/2019 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-33, Mumbai in appeal No.CIT(A)-33/Rg.21/295/2016-17 & 33/2017-18 dated 18/01/2019 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The only common issue involved in this appeal is with regard to action of the Id. CIT(A) upholding the levy of penalty u/s.271(1)(c) of the Act. With the consent of both the parties, the A.Y.2013-14 is taken as the lead case and the decision rendered thereon would apply with equal force for A.Y.2014-15 also except with variance in figures.

3. We have heard rival submissions and perused the materials available on records. We find that the return of income for the A.Y.2013-14 was filed by the assessee on 29/07/2013 declaring total income of Rs.5,15,620/-. The assessee is a senior citizen receiving income from salary, income from business and short term capital gains. The assessee has adjusted the business loss of A.Y.2009-10 against the business income derived during the year. The Id. AO observed that assessee had credited interest income of Rs.17,47,376/- in its profit and loss account and treated the same as income from business in the return of income. The Id. AO on perusal of return of income of earlier years of the assessee brought the following facts on record with regard to treatment of interest income by the assessee in the return of income of earlier years as under:-

- a) A.Y.2009-10 – Interest income of Rs.14,16,130/- was shown by the assessee under the head 'income from other sources'.
- b) A.Y.2010-11 – Interest income of Rs.11,71,801/- was shown by the assessee under the head 'income from other sources'.
- c) A.Y.2011-12 – Interest income of Rs. 5,26,190/- was shown by the assessee under the head 'income from other sources'.
- d) A.Y.2012-13- Interest income of Rs.16,44,724/- was shown by the assessee as '**income from business**'.

3.1. The Id. AO observed that the aforesaid interest income was shown by the assessee including the interest income during the year under consideration from loans given by the assessee and fixed deposits kept with banks. Since assessee is not engaged in the business of advancing loans, the Id. AO sought to treat the interest income derived by the assessee as income from other sources and accordingly, denied the benefit of set off of brought forward business loss against the same while completing the assessment. The Id. AO initiated penalty proceedings u/s.271(1)(c) of the Act by mentioning in the body of the assessment order that the same is initiated for furnishing inaccurate particulars of income. We find on perusal of the penalty notice dated 29/10/2015, the Id. AO had not struck-off the specific charge i.e. whether the assessee has concealed particulars of his income or whether the assessee had furnished inaccurate particulars of his income. Ultimately, the order u/s.271(1)(c) of the Act was passed by the Id. AO for the A.Y.2013-14 on 26/04/2016 levying penalty for furnishing inaccurate particulars of income in respect of aforesaid interest income. The action of the Id. AO was upheld by the Id. CIT(A). We find that the Id. AR argued that in the absence of striking off of the relevant portion in the penalty notice dated 29/10/2015 specifying the offence committed by the assessee, the penalty levied by the assessee does not have legs to stand. In support of this proposition, the Id. AR placed on record, the copy of the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs. Goa Coastal Resorts and Recreation Pvt. Ltd., in Tax Appeal No.24 of 2019 dated 11/11/2019. We have gone through the said judgement and for the sake of convenience, the facts and the decision rendered thereon by the Hon'ble Jurisdictional High Court are reproduced hereunder:-

“Heard Ms Razaq, learned Advocate for the appellant and Shri. Rao, learned Advocate for the respondent No.2.

2. Ms. Razaq, learned Advocate for the appellant urges admission of this appeal on the following substantial questions of law:

i) Whether on the facts and in the circumstances of the case, the Tribunal is right in law and fact, in deleting the penalty levied u/s. 271(1) (c) of the Income Tax Act, 1961?

3. Ms Razaq, learned Advocate submits that in this case the revised returns filed by the respondents indicated that the disclosures were made only by piecemeal. Relying upon *Mak Data (P.) Ltd v/s. Commissioner of Income Tax 1*, she submits that such disclosure does not relieve the assessee of the requirement of paying penalty. He submits that the assessment order in the present case makes reference to concealment and/or inaccurate particulars. In this view of the matter, she submits that the substantial questions of law as aforesaid will be arises and the view taken by the Commissioner (Appeals) as well as the ITAT in relation the deletion of penalty, warrants interference.

4. Mr Rao, learned Advocate for the assessee points out that there is absolutely no finding as regards concealment or furnishing of inaccurate particulars. He further points out that in the notice issued to the assessee on 30/09/2016, the Deputy Commissioner had not even bothered to strike down the relevant portion of the printed form in order to indicate whether the satisfaction is based upon the concealment of particulars or furnishing of inaccurate particulars. He relies on *Commissioner of Income Tax-11 v/s. Shri Samson Perinchery and Principal Commissioner of Income Tax v/s. New Era Sova Mine* to submit that on the basis of such a defective notice, award of penalty can never be sustained.

5. We have carefully examined the record as well as duly considered the rival contentions. Both the Commissioner (Appeals) as well as the ITAT have categorically held that in the present case, there is no record of satisfaction by the Assessing Officer that there was any concealment of income or that any inaccurate particulars were furnished by the assessee. This being a sine qua non for initiation of penalty proceedings, in the absence of such petition, the two authorities have quite correctly ordered the dropping of penalty proceedings against the petitioner.

6. Besides, we note that the Division Bench of this Court in *Samson(supra)* as well as in *New Era Sova Mine (supra)* has held that the notice which is issued to the assessee must indicate whether the Assessing Officer is satisfied that the case of the assessee involves concealment of particulars of income or furnishing of inaccurate

particulars of income or both, with clarity. If the notice is issued in the printed form, then, the necessary portions which are not applicable are required to be struck off, so as to indicate with clarity the nature of the satisfaction recorded. In both Samson Perinchery and New Era Sova Mine (supra), the notices issued had not struck off the portion which were inapplicable. From this, the Division Bench concluded that there was no proper record of satisfaction or proper application of mind in matter of initiation of penalty proceedings.

7. In the present case, as well if the notice dated 30/09/16 (at page 33) is perused, it is apparent that the relevant portions have not been struck off. This coupled with the fact adverted to in paragraph (5) of this order, leaves no ground for interference with the impugned order. The impugned order are quite consistent by the law laid down in the case of Samson Perinchery and New Era Sova Mine(supra) and therefore, warrant no interference.

8. The contention based upon MAK Data (P.) Ltd.(supra) also does not appeal to us in the peculiar facts of the present case. The notice in the present case is itself is defective and further, there is no finding or satisfaction recorded in relation to concealment or furnishing of inaccurate particulars.

9. For the aforesaid reasons, we hold that no substantial questions of law arises in this appeal. Consequently, this appeal is dismissed.”

3.2. We have already observed that the show-cause notice issued in the present case u/s.274 of the Act does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income. The show-cause notice u/s.274 of the Act does not strike off the inappropriate words. In these circumstances, we are of the view that imposition of penalty cannot be sustained which is also supported by the decision of Hon'ble Jurisdictional High Court referred to supra. We therefore, hold that imposition of penalty in the present case cannot be sustained and the same is directed to be cancelled.

4. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on this 15/01/2020

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 15/01/2020
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai