

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**Before Shri L. P. Sahu, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 261/Asr./2017
(Assessment Year: 2006-07)**

Shri Sarabjit Singh Gumtala
V.P.O. Gumtala,
Amritsar

Vs.

Income Tax Officer
Ward 5(4), Amritsar

PAN– AONPS0313R

(Appellant)

(Respondent)

Appellant by: Shri Nipun Khanna (C.A.)
Respondent by: Shri Charan Dass, (D.R.)

Date of Hearing: 06.02.2020
Date of Pronouncement: 30.06.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-2, Amritsar, dated 02.03.2016, which in turn arises from the order passed by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 (for short 'IT Act'), dated 29.09.2014 for A.Y 2006-07.

2. The assessee has assailed the impugned order on the following grounds of appeal before us:

- "1. That the penalty order of the Ld. Assessing Officer of Income-Tax, Ward 5(4) Amritsar u/s 271(1)(c) of the Income Tax Act, 1961, dated 29.09.2014 is illegal, arbitrary and contrary to the facts on the record and this illegality pervades all grounds of appeal and no penalty was imposable. That the Worthy CIT(Appeals) without appreciating completed facts, submissions and legal position has further erred in confirming the decision of Ld. AO.
2. That the AO has failed to take cognizance of the fact that assessment was made on estimate basis by striking peak credit.

3. That the Id AO has failed to take notice from assessment file that the quantum appeal of assessee was decided in his favour and Quantum dispute is still pending before ITAT Amritsar bench and as such penalty order is passed post haste as it was becoming time barred.
4. That on facts and law penalty order is contrary to decision of Punjab & Haryana High Court that no penalty can be imposed till such time that the quantum appeal for the particular assessment year has been disposed off. Therefore penalty imposed is contrary to decision of Punjab & Haryana High Court and in the interest of Equity and Justice and binding nature of decision of Punjab & Haryana High Court penalty order is prayed to be quashed.
4. That the appellant craves leave to add, amend or withdraw any new ground or grounds of appeal before or at the time of hearing of appeal.”

Also, the assessee has raised the following additional grounds of appeal before us:-

1. The Ld. AO and CIT Appeals erred on law and facts in levying penalty without looking into facts that no penalty is imposed in main order on basis of which tax was paid.
2. The Ld. AO and CIT-Appeals erred on law and fact in levying penalty without looking that return declaring income was filed and tax due thereon much before initiation of proceedings under section 147/148. Therefore there is no concealment. There is Nil addition as per order under section 147/148 leading to passing of order against machinery provisions of law.
3. The Ld AO and CIT Appeals erred on law and fact by not recording satisfaction for initiation of penalty proceedings.
4. The order passed by Ld AO and CIT-Appeals is bad in law as Ld AO in case of Ajit Singh had no power to exercise jurisdiction or to assess income of other members as jurisdiction of same lies with assessing officer of Sh Sarabjit Singh Gumtala.
5. The Ld AO and CIT Appeals erred on law and facts by not looking into facts that no penalty is initiated against any other party involved in order.
6. The Ld Assessing officer and worthy CIT-Appeals erred on law and facts in imposing penalty without looking into the order that addition is made on estimated basis pure guess work without complete detailed working where no books of accounts were maintained by assessee.
7. The Id Assessing Officer and worthy CIT-Appeals erred on law and facts in imposing penalty without looking into fact that no penalty is imposed or initiated to any other party involved as they had followed the main order.”

As the assessee by raising the aforesaid additional grounds of appeal has assailed the validity of the penalty imposed by the A.O under Sec. 271(1)(c) of the Act, which requires an adjudication on the basis of the facts emerging from the records, therefore, the same in light of the judgment of the Hon’ble Supreme Court in the case of National Thermal Power Corporation Limited Vs. CIT (1998) 229 ITR 383 (SC) are admitted.

3. Briefly stated, on the basis of information shared by the Income Tax Officer, Ward-3(1), Amritsar, vide his letter dated 21.01.2009, it was gathered by the A.O that the assessee in association with certain persons viz. S/ssh. Ajit Singh, Gurbax Singh and Omkar Sharma had

earned certain income from property business, which thereafter was parked in the bank account with Punjab & Sind Bank, Amritsar. As per the aforesaid information the share of the assessee from the aforesaid property business worked out at Rs. 11,01,515/-. It was further gathered by the A.O that all of the aforementioned persons had filed 'affidavits' admitting income from the aforesaid joint venture. Acting upon the aforesaid information, the A.O holding a belief that the income of the assessee to the tune of Rs. 11,01,515/- (share of the assessee in the aforesaid property business) had escaped assessment, reopened his case under Sec. 147 of the Act.

4. In the course of the assessment proceedings it was observed by the A.O that the assessee had on 12.01.2009 filed his return of income for A.Y. 2006-07, declaring an income of Rs. 13,82,480/-, which included his share of income from the property business of Rs. 11,01,515/-. As the aforesaid return of income filed by the assessee was a belated return, the same was thus treated as non-est by the A.O. In response to a notice issued under Sec. 148 of the Act, the assessee vide his letter dated 12.03.2014 requested that the aforesaid return of income filed by him on 12.01.2009 may be treated as the return filed in compliance to the said notice. Acting upon the aforesaid request, the A.O treated the impugned return filed by the assessee as the return filed in response to the notice under Sec. 148 and issued notices u/ss. 143(2)/142(1) of the Act. After perusing the cash deposits in the bank account, it was observed by the A.O that the assessee in its return of income filed under Sec.148 of the Act had offered the peak deposit of Rs. 11,01,515/- for tax. Accordingly, the A.O vide his order passed under Sec. 143(3)/147, dated 28.03.2014 assessed the income of the assessee at the returned income of Rs. 13,82,480/-. At the same time, the A.O taking cognizance of the fact that the assessee had shown the aforesaid income after detection by the department, therein initiated penalty proceedings for concealment of the particulars of his income under Sec. 271(1)(c) of the Act.

5. After the culmination of assessment proceedings the A.O called upon the assessee to 'show cause' as to why penalty under Sec. 271(1)(c) may not be imposed upon him. However, as the assessee despite sufficient opportunity failed to comply with the aforesaid notice, the

A.O after deliberating on the fact situation of the case imposed a penalty under Sec. 271(1)(c) of Rs. 4,09,242/-, vide his order dated 29.09.2014.

6. Aggrieved, the assessee assailed the penalty imposed by the A.O under Sec. 271(1)(c) before the CIT(A). Observing, that the assessee had come forth with the surrender of the peak deposit of Rs. 11,01,515/- in his undisclosed bank account only after the same was detected by the department, the CIT(A) did not find any infirmity in the view taken by the A.O and upheld the penalty imposed by him under Sec. 271(1)(c) of the Act. Accordingly, the appeal filed by the assessee was dismissed.

7. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. On a perusal of the aforesaid grounds, we find that the assessee had inter alia assailed the validity of the penalty imposed under Sec. 271(1)(c), for the reason, that the A.O had failed to record his satisfaction at the stage of initiating the penalty proceedings. We are unable to persuade ourselves to subscribe to the aforesaid claim of the assessee. As is discernible from the assessment order passed by the A.O under Sec. 143(3)/147, dated 28.03.2014, the A.O had categorically initiated penalty under Sec. 271(1)(c) for concealment of particulars of income by the assessee. Also, a 'show cause' notice under Sec. 274 of even date is stated to have been issued by the A.O while culminating the assessment. We may herein observe that the Learned Authorized Representative (for short A.R.) for the assessee had neither pointed out any infirmity either in the recording of such satisfaction by the A.O in the body of the assessment order or in the 'show cause' notice issued by him under Sec. 274 of the Act. Accordingly, not finding favour with the aforesaid claim of the assessee, we reject the same.

8. As regards the claim of the assessee that the lower authorities were in error in levying/sustaining penalty under Sec. 271(1)(c), loosing sight of the fact that the assessee prior to the initiation of the proceedings under Sec. 147 of the Act had already filed his return of income and paid tax due thereon, we are unable to find ourselves to be in agreement with the assessee. As observed by us hereinabove, the impugned return of income filed by the

assessee for the year under consideration i.e. A.Y. 2006-07 on 12.01.2009 being a belated return was rightly held by the A.O as non-est. Accordingly, we find no infirmity in the view taken by the lower authorities who in our considered view had rightly declined to take cognizance of the impugned non-est return that was filed by the assessee on 12.01.2009.

9. We shall now advert to the challenge thrown by the assessee to the assumption of jurisdiction by the A.O. It is the claim of the assessee that the A.O exercising jurisdiction in the case of Sh. Ajit Singh was divested of assessing his income, as the requisite jurisdiction was vested with the A.O exercising the regular jurisdiction over his case. We find that neither any contention in support of the aforesaid claim was raised by the assessee in the course of hearing of the appeal before us nor the same was ever raised before the lower authorities. Be that as it may, we find that as the assessee had not assailed the validity of jurisdiction of the A.O in terms of sub-section (4) of Sec. 124 of the Act, therefore, he is precluded from raising the same for the very first time in the course of the proceedings before us. Accordingly, finding no substance in the aforesaid claim of the assessee, we reject the same.

10. We shall now take up the claim of the assessee that the lower authorities had erred in overlooking the fact that now when no penalty under Sec. 271(1)(c) was initiated against the other parties viz. S/ssh. Ajit Singh, Gurbax Singh and Omkar Sharma, therefore, adopting a consistent approach no such penalty could have been imposed in the hands of the assessee. In order to drive home his aforesaid claim the Ld. A.R had placed on our record a copy of the assessment order passed under Sec. 143(3), dated 31.12.2008 in the case of Sh. Ajit Singh (supra). Also, a copy of the order passed by the Tribunal while disposing off the appeal of the revenue in the case of Sh. Ajit Singh had been filed before us. We do not find ourselves to be in agreement with the aforesaid claim of the assessee. As the facts in the case of Sh. Ajit Singh are found to be distinguishable, therefore, the view therein taken cannot be transposed for the purpose of adjudicating the case of the assessee before us. As such, we decline to accept the aforesaid claim of the assessee.

11. We shall now advert to the claim of the assessee that the lower authorities had erred by failing to appreciate that as the addition in the case of the assessee was made on an estimated basis and involved a pure guess work, therefore, no penalty under Sec. 271(1)(c) was liable to

be imposed. In our considered view, the aforesaid contention of the assessee is absolutely misconceived and fallacious. As is discernible from the assessment order the A.O had made an addition of unexplained cash deposits of Rs.11,01,515/- appearing in the undisclosed bank account of the assessee. As such, it is incorrect on the part of the assessee to claim that the addition made in his hands was merely backed by a process of estimation and guess work. Accordingly, we reject the aforesaid claim of the assessee.

12. We shall now advert to the claim of the assessee that now when the return of income filed by him in compliance to notice under Sec. 148 had been accepted as such by the A.O, and no addition/disallowance was therein made, therefore, no penalty under Sec. 271(1)(c) was liable to be imposed on him. Admittedly, the aforesaid claim of the assessee at the first blush appeared to be very convincing, but we are afraid that the same does not fall within the four corners of the settled position of law. At this stage we may herein refer to 'Explanation 3' to Sec. 271(1)(c) of the Act, which reads as under :

"[Explanation 3- Where any person fails, without reasonable cause, to furnish within the period specified in sub-section (1) of section 153 a return of his income which he is required to furnish under section 139 in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (i) of sub-section (1) of section 142 or section 148 and the Assessing Officer or the Commissioner (Appeals) is satisfied that in respect of such assessment year such person has taxable income, then such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his income in respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice under section 148]".

We shall now consider the fact pattern in the case of the assessee before us in the backdrop of the aforesaid 'Explanation 3' to Sec. 271(1)(c) of the Act. For a fair appreciation the facts involved in the case before us can be bifurcated into three parts viz. (i).that, the return of income of the assessee for A.Y. 2006-07 as per sub-section (1) of Sec. 153 could have been filed latest by 31.12.2008; (ii) that, it is a matter of fact borne from the records that no notice was issued to the assessee for A.Y. 2006-07 either under Clause (i) of sub-section (1) of Sec. 142 or Sec. 148 till 31.12.2008; and (iii) that, the A.O holding a bonafide belief that the income of the assessee chargeable to tax had escaped assessment had issued a notice under Sec. 148 on 26.03.2013. In the backdrop of the aforesaid fact situation, we find that all the three conditions contemplated in 'Explanation 3' for the purpose of concluding that the assessee had deemed to have concealed the particulars of his income for A.Y. 2006-07 are found to have

been cumulatively satisfied. As contemplated in 'Explanation 3' to Sec. 271(1)(c) of the Act, without prejudice to the fact that the assessee had furnished his return of income after the expiry of the aforesaid period i.e. 31.12.2008, in compliance to the notice that was issued to him under Sec. 148 of the Act, dated 26.03.2013, the same would in no way take his case beyond the sweep of 'Explanation 3' to Sec. 271(1)(c) of the Act.

13. As observed by us hereinabove, the assessee had filed a belated return of income for A.Y. 2006-07 on 12.01.2009, which was non-est in the eyes of law. Interestingly, a perusal of the fact situation in the case of the assessee reveals that even the said belated return was filed by the assessee only for the reason that the ITO, Ward-3(1), Amritsar, while assessing the case of Sh. Ajit Singh (supra) had shared the information as regards the undisclosed income of the assessee with the latter's A.O. Accordingly, it can safely be concluded that no bonafides of the assessee can even be related to the belated/non-est return of income for A.Y.2006-07 that was filed by him on 12.01.2009. On the basis of the aforesaid facts, we are of a strong conviction that as the assessee before us had without any reasonable cause failed to file his return of income under Sec. 139 of the Act within the period specified in sub-section (1) of Sec. 153 of the Act, therefore, in our considered view the assessee can safely or in fact inescapably be deemed to have concealed the particulars of his income within the meaning of 'Explanation 3' to Sec. 271(1)(c) of the Act. Accordingly, finding no infirmity in the view taken by the lower authorities, who in our considered view had rightly concluded that the assessee had concealed the particulars of his income of Rs. 11,01,515/- imposed a penalty of Rs. 4,09,242/- under Sec. 271(1)(c) of the Act, we uphold the same in terms of our aforesaid observations.

14. Before parting, we may herein deal with a procedural issue that though the hearing of the captioned appeal was concluded on 06/02/2020, however, this order is being pronounced much after the expiry of 90 days from the date of conclusion of hearing. We find that Rule 34(5) of the Income-tax Appellate Tribunal Rules, 1962, which envisages the procedure for pronouncement of orders, provides as follows: (5) The pronouncement may be in any of the following manners :— (a) The Bench may pronounce the order immediately upon the conclusion of the hearing. (b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement. In a case where no

date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board. As such, “ordinarily” the order on an appeal should be pronounced by the bench within no more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression “ordinarily” has been used in the said rule itself. This rule was inserted as a result of directions of Hon’ble High Court in the case of Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)] wherein it was inter alia, observed as under:

“We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile (emphasis, by underlining, supplied by us now), all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment”.

In the rule so framed, as a result of these directions, the expression “ordinarily” has been inserted in the requirement to pronounce the order within a period of 90 days. The question then arises whether or not the passing of this order, beyond a period of ninety days in the case before us was necessitated by any “extraordinary” circumstances.

15. We find that the aforesaid issue after exhaustive deliberations had been answered by a coordinate bench of the Tribunal viz. ITAT, Mumbai ‘F’ Bench in DCIT, Central Circle-3(2), Mumbai Vs. JSW Limited & Ors. [ITA No. 6264/Mum/18; dated 14/05/2020, wherein it was observed as under:

“Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon’ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid 19 epidemic, and this lockdown was extended from time to time. The epidemic situation being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial work all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon’ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that “In case the

limitation expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown". Hon'ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, "It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly", and also observed that "arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June 2020". It has been an unprecedented situation not only in India but all over the world. Government of India has, vide notification dated 19th February 2020, taken the stand that, the coronavirus "should be considered a case of natural calamity and FMC (i.e. force majeure clause) maybe invoked, wherever considered appropriate, following the due procedure...". The term 'force majeure' has been defined in Black's Law Dictionary, as 'an event or effect that can be neither anticipated nor controlled' When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an "ordinary" period.

10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to be interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of *Otters Club Vs DIT* [(2017) 392 ITR 244 (Bom)], Hon'ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon'ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that directed "while calculating the time for disposal of matters made time bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly". The extraordinary steps taken suo motu by the Hon'ble High Court and Hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words "ordinarily", in the light of the above analysis of the legal position, the period during which lockout was in force is to be excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case."

We have given a thoughtful consideration to the aforesaid observations of the tribunal and finding ourselves to be in agreement with the same respectfully follow the same. As such, we are of the considered view that the period during which the lockout was in force shall stand excluded for the purpose of working out the time limit for pronouncement orders, as envisaged in Rule 34(5) of the Appellate Tribunal Rules, 1963.

16. Resultantly, the appeal filed by the assessee is dismissed.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-
(L. P. Sahu)
ACCOUNTANT MEMBER
Date 30.06.2020

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/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**
5. **DR, ITAT, Amritsar Bench, Amritsar**
6. **गार्ड फाईल / Guard file.**

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ITAT, Amritsar. Bench,
Amritsar.