

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL, MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.624/Mum/2020 & 625/Mum/2020
(Assessment Year :2012-13 & 2013-14)**

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| Mrs. Nalini Jayantilal Sayia Shah 202, Sai Sadan, 37 th Road, Linking Road, Bandra West Mumbai – 400 050 | Vs. | Income Tax Officer Ward- 23(2)(4) Matru Mandir Mumbai – 400 007 |
| PAN/GIR No.AUNPS6366C | | |
| (Appellant) | .. | (Respondent) |

| | |
|------------------------------|-------------------|
| Assessee by | None |
| Revenue by | Shri Pankaj Kumar |
| Date of Hearing | 15/07/2021 |
| Date of Pronouncement | 19/07/2021 |
| | |

आदेश / ORDER

PER M. BALAGANESH (A.M):

These appeals in ITA No.624/Mum/2020 & 625/Mum/2020 for A.Y.2012-13 & 2013-14 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-33, Mumbai in appeal No.33/11663/2015-16 & 33/10371/2016-17 dated 28/11/2019 (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 Act).

2. As identical grounds are raised by the assessee in both the years, they are taken up together and disposed of by this common order for the sake of convenience.

ITA No.624/Mum/2020 (A.Y.2013-14)

3. The only identical issue involved in this appeal is as to whether the Id. CIT(A) was justified in confirming the levy of penalty u/s.271(1)(c) of the Act in the facts and circumstances of the instant case.

4. We have heard the Id. DR and perused the material available on record. We find that assessee is an individual woman deriving income from property, capital gains and other sources including commodity transactions. The original return of income for the A.Y.2012-13 was filed belatedly by the assessee on 29/03/2014 declaring total income of Rs.1,66,500/-. The case was selected for scrutiny under Computerised Assisted Selection of cases for Scrutiny (CASS) to examine the cash deposits and the large commodity exchange transactions. The Id. AO observed that as per AIR information, the assessee has carried out large scale commodity transactions in MCX and assessee had not declared any income from the said transactions. Accordingly, the Id. AR during the course of assessment proceedings sought details of the same from the assessee. The assessee replied during the course of assessment proceedings by stating that the commodity transaction was undertaken through broker M/s. Shreya Commodities and the major commodities in which trades have been undertaken were silver, gold and crude. The entire details of the same were enclosed along with reply letter dated 26/03/2015 by the assessee. The assessee pleaded that the payments to the broker were made by account payee cheques which are duly reflected

in her bank statements. The assessee also furnished the profit and loss account for commodity transactions before the Id. AO. The assessee pleaded that the profit and loss for transactions for the open position is offered to tax in the next financial year. The assessee also stated that she had incurred certain expenditures like travelling to the broker premises and certain other expenses for the purpose of business which were claimed as deduction against the profit from commodities. It was pleaded that the assessee had only incurred the huge losses in overall commodities transaction which is evident from the profit and loss account submitted before the Id. AO. Accordingly, the assessee being a widow, had stated that since there was only loss incurred by the assessee, she had chosen not to disclose the same in the return of income that she was not aware of the taxation laws. However, the Id. AO observed in the quantum assessment order, that from the profit and loss account filed by the assessee, assessee had claimed travelling expenses at Rs.3,69,789/- and other expenses of Rs.2,50,648/- for which the details were not furnished by the assessee. Accordingly, the Id. AO proceeded to make an estimated disallowance @20% of travelling expenses as attributable for personal use and disallowed the entire other expenses of Rs.2,50,648/- in the assessment. The Id. AO also observed that assessee had earned gross profit of Rs.14,56,511/- and net profit of Rs.6,82,211/- from commodity transaction for A.Y.2012-13. **The Id. AO ultimately initiated penalty proceedings u/s.271(1)(c) of the Act for concealment of income in the quantum assessment order.** The Id. AO observed that since assessee had earned income from commodity exchange transactions amounting to Rs.6,82,211/- which was not disclosed by her in the return of income, **proceeded to levy penalty u/s.271(1)(c) of the Act on the ground that assessee had furnished inaccurate particulars of income** and accordingly levied penalty of Rs.1,20,000/- u/s.271(1)(c) of

the Act for the A.Y.2012-13. Before the Id. CIT(A), the assessee reiterated the submissions made before the Id. AO and had also stated that she had paid the entire taxes demanded by the Id. AO in the assessment order. The Id. CIT(A) ultimately upheld the order of Id. AO by confirming the levy of penalty.

4.1. We find from the aforesaid narration of facts that penalty proceedings u/s.271(1)(c) of the Act has been initiated by the Id. AO for concealment of income, but ultimately the penalty has been levied by the Id. AO for furnishing inaccurate particulars of income. This is a classic case wherein penalty has been initiated under one limb of Section 271(1)(c) of the Act and ultimately levied for another limb of Section 271(1) (c) of the Act. We find that the Hon'ble Jurisdictional High Court in the case of CIT vs. Samson Perinchery reported in 392 ITR 4 (Bom) had held that concealment of income and furnishing of inaccurate particulars of income in Section 271(1)(c) of the Act carry different meanings / connotations and therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned u/s. 271(1)(c) of the Act, for initiation of penalty proceedings will not warrant / permit penalty being imposed for the other breach. The order imposing penalty has to be made only on the ground of which penalty proceedings has been initiated, and it cannot be on a fresh ground of which the assessee has no notice. Therefore, where the Assessing Officer initiated penalty proceedings u/s.271(1)(c) for furnishing inaccurate particulars of income, the order imposing penalty for concealment of income was not valid. While rendering this judgment, we find that the Hon'ble Jurisdictional High Court also placed reliance on the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory reported in 359 ITR 565 and also on the decision of

the Hon'ble Supreme Court in the case of T. Ashok Pai vs. CIT reported in 292 ITR 11. Respectfully following the aforesaid decisions of the Hon'ble Jurisdictional High Court and Hon'ble Supreme Court, we hereby direct the Id. AO to delete the penalty levied u/s.271(1)(c) of the Act in the sum of Rs.1,20,000/- in A.Y.2012-13.

5. In the result, appeal of the assessee in ITA No.624/Mum/2020 for A.Y.2012-13 is allowed.

ITA No.625/Mum/2020 (A.Y.2013-14)

6. We find that assessee had filed its return for A.Y.2013-14 on 31/03/2015 declaring losses of Rs.8,98,466/-. The Id. AO in the quantum assessment order has observed that assessee had shown loss from commodity transactions of Rs.14,22,535/- and had set off the same against the income from house property and other sources. During the course of assessment proceedings, the assessee vide her letter dated 09/02/2006 as stated that assessee had set off the loss from commodity transactions with regular income from house property and other sources based on the bonafide belief that the same would be eligible. Later, the assessee withdrew his claim for set off and offered other income for taxation accordingly. The said loss was disallowed duly by the **Id. AO in the quantum assessment and penalty proceedings were initiated for furnishing inaccurate particulars of income u/s.271(1)(c) of the Act. Ultimately, the Id. AO has levied penalty for both the inaccurate particulars of income as well as concealment of particulars of income** in the sum of Rs.4,39,600/- u/s. 271(1)(c) of the Act in his penalty order which was upheld by the Id. CIT(A).

6.1. We find from the aforesaid narration of facts and penalty proceedings u/s.271(1)(c) of the Act has been initiated by the Id. AO for furnishing of inaccurate particulars of income but ultimately, the penalty has been levied for both concealment income as well as furnishing of inaccurate particulars of income. This is a classic case wherein penalty has been initiated under one limb of Section 271(1)(c) of the Act and ultimately levied for another limb of Section 271(1) (c) of the Act. We find that the Hon'ble Jurisdictional High Court in the case of CIT vs. Samson Perinchery reported in 392 ITR 4 (Bom) had held that concealment of income and furnishing of inaccurate particulars of income in Section 271(1)(c) of the Act carry different meanings / connotations and therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under Section 271(1)(c) of the Act, for initiation of penalty proceedings will not warrant/ permit penalty being imposed for the other breach. The order imposing penalty has to be made only on the ground of which penalty proceedings has been initiated, and it cannot be on a fresh ground of which the assessee has no notice. Therefore, where the Assessing Officer initiated penalty proceedings u/s.271(1)(c) for furnishing inaccurate particulars of income, the order imposing penalty for concealment of income or for both concealment and furnishing of inaccurate particulars of income, was not valid. While rendering this judgment, we find that the Hon'ble Jurisdictional High Court also placed reliance on the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory reported in 359 ITR 565 and also on the decision of the Hon'ble Supreme Court in the case of T. Ashok Pai vs. CIT reported in 292 ITR 11. Respectfully following the aforesaid decisions by the Hon'ble Jurisdictional High Court and Hon'ble

Supreme Court, we hereby direct the Id. AO to delete the penalty levied u/s.271(1)(c) of the Act in the sum of Rs.4,39,600/- in A.Y.2013-14.

6.2. In the result, appeal of the assessee in ITA No.625/Mum/2020 for A.Y.2013-14 is allowed.

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

Order pronounced on 19/07/2021 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai; Dated 19/07/2021
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

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