

IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI  
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &  
PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.8004/Mum/2019

(A.Y: 2012-13)

M/s. Modernova Plastyles Pvt Ltd., B/1, Pravasi Industrial Estate, Off Aarey Road, Goregoan (E), Mumbai – 400 063	Vs.	DCIT – 12(3)(2) Room No. 147B, 1 <sup>st</sup> Floor, Aayakar Bhavan, MK Road, Mumbai – 400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACA1013A		
Appellant	..	Respondent

Appellant by :	Shri Rashmikant Modi. AR
Respondent by :	Shri S.N.Kabra. DR

Date of Hearing	13.09.2021
Date of Pronouncement	15.09.2021

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)- 21, Mumbai passed u/s 271(1)(c) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

- 1. On the facts and in the circumstances of the case, the Appellant submits that the Hon'ble Commissioner of Income Tax (Appeals), Mumbai erred in upholding the Learned Assessing Officer's view of the disallowance of write off of*

obsolete stock amounting to Rs. 2,76,27,079/- as concealment of income for filing inaccurate particulars of income. The Appellant submits that the disallowance of write off of obsolete stock amounting to Rs. 2,76,27,079/- should not be treated as concealment of income.

2. On the facts and in the circumstances of the case, the Appellant submits that the Hon' ble Commissioner of Income Tax (Appeals), Mumbai erred in upholding the penalty of Rs. 93,90,444/- levied **u/S** 271(1 )(c) of The Income Tax Act, 1961 by the Learned Assessing Officer without considering and discussing the Appellant's submission made during the appeal proceedings.

The Appellant submits that the penalty of Rs. 93,90,444/- levied u/s 271(1)(c) be deleted.

3. On the facts and in the circumstances of the case, the Appellant submits that the Learned Assessing Officer has not specified in his notice u/s 274 r.w.s 271(1)(c) dated 23.03.2015 that whether the penalty proceedings are initiated for concealment of income or furnishing of inaccurate particulars of such income.

The Appellant submits that the penalty proceedings initiated u/s 271(1) (c) is bad in law and therefore, the Appellant further submits that the penalty order passed u/s 271 (1) (c) be quashed.

4. Without prejudice to the above, the Appellant submits that the Hon. Commissioner of Income Tax (Appeals), Mumbai has erred in considering and discussing the ground of appeal raised by the Appellant before him that the penalty be compute at the applicable rate of 32.445% instead of 33.99% adopted by the Learned Assessing Officer in the case of loss return of income filed by the Appellant.

The appellant submits that the penalty be recomputed at the applicable rate of 32.445% on tax sought to be evaded

5. The appellant craves leave to reserve to itself the right to add, alter, amend or annual any of the ground of appeal at or before the time of hearing and to produce such further

*evidences, documents and papers as may be necessary.*

2. At the time of hearing, the Ld.AR submitted that the assessee has challenged the levy of penalty and the legal issue of validity of notice u/s 271(1)(c) of the Act.

3. The Brief facts of the case are that the assessee company is engaged in the business of manufacturing of plastic items using molding machines. The assessee has filed the Return of income for the A.Y 2012-13 on 23.02.2013 declaring a total income (loss) of Rs. 3,09,22,140/-. Subsequently, the case was selected for scrutiny under CASS and the Assessing Officer(A.O.) has issued the notice U/Sec 143(2) and 142(1) of the Act. In compliance, the Ld.AR of the assessee appeared from time to time and furnished the details and the case was discussed. The A.O. on perusal of the financial statements found that the assessee company has disclosed a Net Loss of Rs. 37,38,563/- after claiming the expenses. Further, the A.O found that the assessee has debited in the Profit & Loss account stock written Off on account of obsolescence of Rs.2,76,27,079/-. The A.O has perused the Notes on Accounts in schedule- XI in the Statutory Audit report on the inventories written off. Further, as per Indian accounting standard (IAS)-2 on inventories, the stocks have been written off on account

of obsolescence and does not realize any value. But the A.O. was not satisfied with the submissions and observed that the assessee company is dealing with plastic items and the cost of the raw material utilized in the final products is increasing day by day and it shall realize some scrap value in the market and disallowed the claim and assessed the total income (Loss) of Rs. 32,95,060/- and passed the order u/s 143(3) of the Act dated 23.03.2015.

4. Subsequently, the A.O. has initiated penalty proceedings u/s 271(1)(c) of the Act. In the penalty proceedings the A.O. has considered the findings of the scrutiny assessment and the assessee has filed the explanations on closure of the company referred in the penalty order. But the A.O. was not satisfied with the explanations and dealt on the provisions of levy of penalty and judicial decisions and finally levied the penalty and passed order u/s 271(1)(c) of the Act dated 28.09.2015.

5. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A). In the appellate proceedings the assessee has filed the submissions. Whereas the CIT(A) was not satisfied with the explanations and confirmed the penalty levied by the Assessing officer and dismissed the appeal. Aggrieved

by the CIT(A) order, the assessee has filed an appeal before the Honble Tribunal.

6. At the time of hearing, the Ld.AR of the assessee submitted that the assessee has cooperated in submitting the possible available information before the A.O. due to closure of business. Further the notice issued for levy of penalty is invalid and supported the submissions with the paper book and prayed for allowing the appeal.

7. Contra, the Ld.DR submitted that the CIT(A) has rightly confirmed the penalty though technicalities raised by the assessee in the grounds of appeal are devoid of merits and prayed for dismissal of the assessee appeal.

8. We heard the rival contentions and perused the material on record. The sole crux of the disputed issue is that the assessee has challenged the levy of penalty on legal issue as the A.O. has not applied his mind and non striking of charge in the penalty notice i.e. whether the charge is for concealment of income or furnishing of in accurate particulars of income. The Ld.AR demonstrated the copy of penalty notice in paper book page 9 and the submissions are realistic.

We find the Jurisdictional Honble High Court of Bombay in Mohd Farhan A Shaikh Vs. DCIT in Tax Appeal No. 51 to 57 of 2012 dated 11.03.2021. (2021) 125. taxmann.com 253 (Bombay) has dealt on this disputed issue of not striking off charge in the penalty notice would vitiate the penalty proceedings. The Hon'ble High Court has made observations at page 56 as under;

*180. One course of before us is curing a defect in the notice by referring to the assessment order, which may or not contain reason for the penalty proceedings. The other course of action is the prevention of defect in the notice – and that prevention takes just a tick mark. Prudence demands prevention is better than cure.*

*Answers:*

*Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Sec. 271(1)(c), does a mere defect in the notice – not striking off the irrelevant matter vitiate the penalty proceedings?*

*181. It does. The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the assessee. But that translates into action only through the statutory notice under Sec. 271(1)(c), r.w.s. 274 of the Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a deferent statutory scheme that remains*

*distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.*

*182. More Particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee's favour.*

9. We have considered the facts, circumstances and ratio of the decision of Honble High Court and are of the view that in the present case the A.O has not strike off the charge for levy of penalty for concealment of income or for furnishing of inaccurate particulars of income. Accordingly, we set aside the order of the CIT(A) and quash the penalty notice. Since the legal issue is decided in favour of the assessee and again adjudicating on merits becomes academic and are left open and we allow the grounds of appeal in favour of the assessee.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 15.09.2021.

Sd/-  
(S RIFAUR RAHMAN)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 15.09.2021

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai