

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1586 & 1587/PUN/2018

निर्धारण वर्ष / Assessment Years : 2010-11 & 2012-13

M/s. Shree Hatkeshwara Cargo Movers Office No.8, Wonder City, Katraj By-Pass Road, Pune – 411046 PAN: AATFS8504N	Vs.	ACIT, Circle-5, Pune
Appellant		Respondent

Assessee by None
Revenue by Shri S.P. Walimbe

Date of hearing 11-01-2022
Date of pronouncement 11-01-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

Both the appeals by the assessee are directed against the confirmation of penalty imposed by the AO u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') in relation to the assessment years 2010-11 and 2012-13. Since common issues are raised in these appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

A.Y. 2010-11

2. Briefly stated, the facts of the case are that the assessee was subjected to Survey action u/s 133A of the Act, wherein a sum of Rs.51,92,239 was offered towards inadmissible expenses. The assessee filed revised return declaring total income of Rs.1,04,88,260, thereby including the declared income. Accordingly, the assessment order was passed u/s 147 r.w.s. 148 with a nominal addition, determining total income at Rs.1,05,68,000. Thereafter, the AO imposed penalty with reference to the amount offered during the course of Survey and included *suo motu* by the assessee in total income. The ld. CIT(A) sustained the penalty. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

3. We have heard the ld. DR through the Virtual Court and scanned through the relevant material on record. The assessee has not put in presence despite notice. As such, we are disposing off the appeal on merits *ex parte qua* the assessee. A copy of notice dated 12.11.2014 issued u/s 274 r.w.s. 271(1)(c) of the Act is a part of the appeal documents. As per this notice, the penalty has been initiated without mentioning exact charge i.e. concealment of income or furnishing of inaccurate particulars of income. In other words, there

is no striking off of the inapplicable limb of the penalty section. The question arises as to whether penalty u/s 271(1)(c) of the Act in such circumstances is sustainable?

4. Recently, the full Bench of Hon'ble Bombay High Court in *Mohd. Farhan A. Shaikh Vs. Dy.CIT (2021) 125 taxmann.com 253 (Bom)* has considered this very issue. Answering the question in affirmative, the Full Bench held that a defect in notice of not striking out the irrelevant words vitiates the penalty even though the AO had properly recorded the satisfaction for imposition of penalty in the order u/s 143(3) of the Act. In another judgment, the Hon'ble Bombay High Court in *Pr.CIT Vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxmann.com 248 (Bom)* also took similar view that where inapplicable portions were not struck off in the penalty notice, the penalty was vitiated. The SLP of the Department against this judgment has recently been dismissed by the Hon'ble Supreme Court in *Pr.CIT Vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxmann.com 249 (SC)*.

5. In view of the overwhelming legal position, it is clear that where the charge is not properly set out in the notice u/s 274, viz., both the limbs stand therein without striking off of the inapplicable limb, the penalty order gets vitiated. Turning to the facts of the

extant case, we find from the notice u/s 274 of the Act that the AO did not mention the correct charge i.e. concealment of income or furnishing of inaccurate particulars of income. Respectfully following the above Full Bench judgment of the Hon'ble jurisdictional High Court, we overturn the impugned order on this legal issue and direct to delete the penalty.

6. The appeal for the A.Y. 2012-13 also involves similar issue of imposition of penalty on the income offered during the course of Survey and included in the total income. For this year also, the AO issued notice u/s 274 read with section 271(1)(c) of the Act dated 12.11.2014 without striking off the incorrect limb. Since the facts and circumstances of the appeal for the A.Y. 2010-11 are similar to those for the A.Y. 2012-13, following the view taken hereinabove for the A.Y. 2010-11, we set aside the penalty.

7. In the result, both the appeals are allowed.

Order pronounced in the Open Court on 11th January, 2022.

Sd/-
(R.S.SYAL)
VICE PRESIDENT

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 11th January, 2022
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A), Pune-10
4. The PCIT-3, Pune
5. DR, ITAT, 'A' Bench, Pune
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	11-01-2022	Sr.PS
2.	Draft placed before author	11-01-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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