

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 409/MUM/2020  
(Assessment Year: 2010-11)**

Ramjilal G. Johar  
C/o M/s Arvind G. Shah  
407 Lotus House, 33A  
New Marine Lines  
Mumbai – 400 020

ITO 19(3)(1)  
Vs. Matru Mandir,  
Aayakar Karyalaya,  
Nana Chowk,  
Mumbai – 400 007

**PAN No. AAAPJ5795M**

**(Assessee)**

**(Revenue)**

Assessee by : Shri Mayur A. Shah, A.R  
Revenue by : Shri Mahendra Ahuja. Sr. D.R

Date of Hearing : 24/11/2021  
Date of pronouncement : 24/01/2022

**ORDER**

**PER RAVISH SOOD, J.M:**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-2, Mumbai, dated 28.11.2019, which in turn arises from the order passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act'), dated 30.03.2016 for A.Y. 2010-11. The assessee has assailed the impugned order on the following grounds before us:

- “1. The CIT(A) erred in confirming the order of the AO levying penalty u/s.271(1)(c) of the Act for concealing the particulars of income. It is prayed that the order levying penalty u/s.271(1)(c) of the Act at Rs.4,84,300/- be held to be bad in law and set aside
2. The CIT(A) erred in holding that the AO was justified in levying penalty u/s.271(1)(c) of the Act for concealing the particulars of income whereas he had initiated proceedings for filing inaccurate particulars of income. It is prayed that

the order levying penalty u/s.271(1)(c) of the Act at Rs.4,84,300/- be held to be bad in law and set aside.

3. The appellant craves leave to amend, alter or modify the above grounds of appeal or to add fresh grounds of appeal, if found necessary.”

2. Briefly stated, the assessee during the year had jointly a/w his wife sold a flat at 6/17, Mangla Apartment, Walkeshwar Road, Mumbai, for a consideration of Rs.3,24,44,000/-, wherein his share of capital gain after claiming indexed cost of acquisition a/w improvement worked out at Rs.1,41,84,044/-. The assessee and his wife invested an amount in Capital Gain Account Scheme (CGAS) with Bank of Baroda, as under:

“Ramji Johar	Rs.1,14,00,000
Nirja Johar	<u>Rs.1,60,00,000</u>
	Rs.2,76,00,000 (1/2 share Rs.1,38,00,000)”

After claiming the deduction u/s 54 of Rs.1,38,00,000/- against the LTCG of Rs.1,41,84,044/-, the balance capital gains worked out in the hands of the assessee at Rs.3,84,000/-. The assessee after setting off the unabsorbed Long Term Capital Loss filed his return of income declaring nil taxable LTCG. During the course of the assessment proceedings, it was observed by the A.O that the assessee’s share of investment in the CGAS account amounted to Rs.1,14,00,000/-, as against his claim for investment of Rs.1,38,00,000/-, i.e, 1/2 share of the total investment that was made by him a/w his wife. Accordingly, the A.O in the backdrop of the aforesaid facts restricted the assessee’s claim for deduction u/s 54 to an amount of Rs.1,14,00,000/- instead of Rs.1,38,00,000/- as claimed by the assessee. Backed by the aforesaid facts, the A.O reworked out the LTCG in the hands of the assessee at an amount of Rs.24,21,039/-. At the time of culminating the assessment proceedings the A.O initiated penalty proceedings u/s 271(1)(c) for furnishing of inaccurate particulars of income by the assessee. Also a ‘Show cause’ notice (‘SCN’) u/s 271(1)(c), dated 04.03.2016 was issued by the A.O, wherein the assessee was called upon to explain as to

why penalty may not be imposed on him for furnishing of inaccurate particulars of income.

3. After the culmination of the assessment proceedings, the A.O vide his order passed u/s 271(1)(c), dated 30.03.2016 imposed a penalty of Rs.4,84,300/- for concealment of the particulars of income by the assessee.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Apart from assailing the penalty on merits, the assessee challenged the validity of the jurisdiction that was assumed by the A.O for imposing penalty u/s 271(1)(c) of the Act. It was the claim of the assessee that though the A.O had initiated the penalty u/s 271(1)(c) for furnishing of inaccurate particulars of income and had issued a 'SCN', dated 04.03.2016 for the said default, however, he had thereafter imposed the penalty for the other default, i.e, concealment of the particulars of income by the assessee. However, the CIT(A) was not inclined to accept the contentions advanced by the assessee and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. At the very outset of the hearing of the appeal, the Id. A.R assailed the validity of the jurisdiction that was assumed by the A.O for imposing penalty u/s 271(1)(c) of the Act. It was submitted by the Id. A.R that while for the A.O had in the body of the assessment order initiated penalty proceedings u/s 271(1)(c) for furnishing of inaccurate particulars of income and, had also issued a SCN, dated 04.03.2016 for the said default, however, he had thereafter imposed the penalty u/s 271(1)(c) for another default, i.e, the concealment of particulars of income by the assessee. It was submitted by the Id. A.R that as the A.O had initiated the penalty proceedings for one default, viz. furnishing of inaccurate particulars of income by the assessee, but had thereafter imposed the penalty for other default, i.e, concealment of income by the

assessee, therefore, he had wrongly assumed jurisdiction, as a result whereof the impugned penalty could not be sustained and was liable to be struck down.

6. We have heard the Ld. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, the A.O in the body of the assessment order had initiated penalty proceedings u/s 271(1)(c) for furnishing of inaccurate particulars of income by the assessee. Also, a perusal of the 'SCN', dated 04.03.2016 reveals that the A.O had called upon the assessee to explain that as to why the penalty u/s 271(1)(c) of the Act may not be imposed on him for the alleged default of furnishing of inaccurate particulars of income. Insofar the validity of the jurisdiction assumed by the A.O is concerned, the same has been assailed before us, on the ground, that as the A.O had initiated the penalty proceedings allegedly for furnishing of inaccurate particulars of income by the assessee, but, had thereafter imposed the same for concealment of income, therefore, the it could not be sustained and was liable to be struck down.

7. We have given a thoughtful consideration to the facts of the case, and are persuaded to subscribe to the claim of the Ld. A.R that though the A.O had both in the assessment order and the 'SCN', dated 04.03.2016 initiated the penalty proceedings u/s 271(1)(c) allegedly for furnishing of inaccurate particulars of income by the assessee, however, he had thereafter imposed the same for another default, i.e, concealment of income. In our considered view, as both of the two defaults envisaged in Sec. 271(1)(c), i.e, 'concealment of income' and 'furnishing of inaccurate particulars of income' are separate and distinct defaults which operate in their independent and exclusive fields, therefore, the A.O had gravely erred in law and the facts of the case in initiating penalty proceedings u/s 271(1)(c) for one default, i.e, furnishing of inaccurate particulars of income by the assessee, but thereafter imposed the penalty for another default, i.e, concealment of income. We are of a strong conviction that the very purpose of

affording a reasonable opportunity of being heard to the assessee as per the mandate of Sec. 274(1) would not only be frustrated but would be rendered redundant if an assessee is not conveyed in clear terms the specific default for which penalty under the said statutory provision was sought to be imposed on him. In our considered view, the indispensable requirement on the part of the A.O to put the assessee to notice as regards the specific charge contemplated under the aforesaid statutory provision, viz. 'concealment of income' or 'furnishing of inaccurate particulars of income' is not merely an idle formality but is a statutory obligation cast upon him, which we find had not been discharged in the present case as per the mandate of law. Admittedly, the A.O is vested with the powers to levy penalty under Sec. 271(1)(c) of the Act, if in the course of the proceedings he is satisfied that the assessee had either 'concealed his income' or 'furnished inaccurate particulars of his income'. In our considered view, as penalty proceedings are in the nature of *quasi criminal* proceedings, therefore, the assessee as a matter of a statutory right is supposed to know the exact charge for which he is being called upon to explain that as to why the same may not be imposed on him. We find that the fine distinction between the said defaults contemplated in Sec. 271(1)(c) viz. 'concealment of income' and 'furnishing of inaccurate particulars of income' had been appreciated at length by the **Hon'ble Supreme Court** in its judgments passed in the case of **Dilip & Shroff Vs. Jt. CIT (2007) 210 CTR (SC) 228** and **T. Ashok Pai Vs. CIT (2007) 292 ITR 11 (SC)**. The Hon'ble Apex Court in its aforesaid judgments, had observed, that the two expressions, viz. 'concealment of particulars of income' and 'furnishing of inaccurate particulars of income' have different connotation. The Hon'ble Apex Court being of the view that the non-striking off the irrelevant limb in the notice clearly reveals a non-application of mind by the A.O had observed as under:-

*"83. It is of some significance that in the standard proforma used by the Assessing Officer in issuing a notice despite the fact that the same postulates that inappropriate words and paragraphs were to be deleted, but the same had not been done. Thus, the Assessing Officer himself*

*was not sure as to whether he had proceeded on the basis that the assessee had concealed his income or he has furnished inaccurate particulars. Even before us, the learned Additional Solicitor General while placing reliance on the order of assessment laid emphasis that he had dealt with both the situations.*

*84. The impugned order, therefore, suffers from non-application of mind. It was also bound to comply with the principles of natural justice [See Malabar Industrial Co. Ltd. Vs. CIT (2000) 2 SCC 718].*

We, thus, are of the considered view, that now when as per the settled position of law the two defaults viz. 'concealment of income' and 'furnishing of inaccurate particulars of income' are separate and distinct defaults, therefore, in case the A.O sought to have proceeded against the assessee for either of the said defaults, then, it was not only incumbent on him to have initiated the penalty proceedings for the specific default and validly put the assessee to notice as regards the same, but even otherwise, he could have by no means initiated the penalty proceedings and/or show-caused the assessee as regards one default, and thereafter imposed penalty for another default. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Samson Perincherry (2017) 392 ITR 4 (Bom). In its said order the Hon'ble High Court had while upholding the view taken by the Tribunal, had held, that the A.O cannot be permitted to initiate penalty u/s 271(1)(c) for one default and thereafter impose the penalty for another default. The observations of the Hon'ble High Court are culled out as under:

*"We, thus, in terms of our aforesaid observations quash the penalty imposed by the A.O u/s 271(1)(c) by invalidly assuming jurisdiction i.e initiating penalty u/s 271(1)(c) for one default i.e furnishing of inaccurate particulars of income and, imposing the same for the other default i.e concealment of income."*

8. As the penalty imposed on the assessee under Sec. 271(1)(c) of the Act had been quashed by us for want of jurisdiction on the part of the A.O, therefore, we refrain from adverting to and adjudicating the merits of the case.

9. The appeal of the assessee is allowed in terms of our aforesaid observations.

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

Sd/-  
(Rajesh Kumar)  
Accountant Member

Sd/-  
(Ravish Sood)  
Judicial Member

Place: Mumbai

Date 24.01.2022

**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. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.