

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

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

आयकर अपील सं. / ITA No.1252/PUN/2016

निर्धारण वर्ष / Assessment Year : 2007-08

Shri Ashok Motilal Katariya,
'Anshuman', 49-50, Near Forest Nursery,
Sahdev Nagar, Gangapur Road,
Nashik – 422013

PAN : ABDPK1068N

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Central Circle – 1,
Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 21-02-2022

घोषणा की तारीख / Date of Pronouncement : 22-02-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 12-05-2016 passed by the Commissioner of Income Tax (Appeals)-13, Pune [‘CIT(A)'] for assessment year 2007-08.

2. The only issue is to be decided as to whether the CIT(A) justified in confirming the penalty imposed by the AO u/s. 271(1)(c) of the Act in the facts and circumstances of the case.

3. Heard both the parties and perused the material available on record. We note that the assessee is an individual derives income from salary, tipper hire charges, capital gain, dividend, interest and agricultural income. The assessee filed return of income declaring a total income of Rs.48,99,890/- along with agricultural income of Rs.58,780/- on 30-07-2007. In consequence of a search and seizure action u/s. 132 of the Act, the assessee declared a total income of Rs.50,74,890/- along with the same agricultural income as declared in the original return of income. According to the AO, the assessee offered for tax a sum of Rs.1,75,000/- in addition to the income as offered in the original return of income and recorded satisfaction that the assessee concealed the income to the tune of Rs.1,75,000/- vide Para No. 4 of the assessment order and initiated penalty proceedings. In pursuance of the said satisfaction, the AO issued notice u/s. 274 r.w.s. 271(1)(c) of the Act which is at Page No. 59 of the paper book. The ld. AR contended that the AO did not mention the specific charge in the statutory notice and in the absence of such charge the penalty levied by the AO is bad under law and referred to the decision of Hon'ble High Court of Bombay in the case of Mohd. Farhan A. Shaikh Vs. DCIT reported in 125 taxmann.com 253 (Bombay) which is at Page No. 7 of the paper book. The ld. DR relied on the order of CIT(A).

4. We note that the AO recorded satisfaction by mentioning that the assessee concealed income to the tune of Rs.1,75,000/- and on perusal of the notice at Page No. 59 which clearly discloses that the AO issued statutory notice without striking the irrelevant charge mentioned therein. The Full Bench of Hon'ble High Court of Bombay in the case of Mohd. Farhan A. Shaikh (supra) held sending a printed form where all the grounds mentioned in Section 271 of the Act would not satisfy the requirement of law. The assessee should know the grounds which he has

to meet the specifically and non-striking of irrelevant charge in the statutory notice is a defect and vitiate the penalty proceedings. In the present case, it is clear from the record the AO recorded that the assessee concealed the income and issued notice without striking off the irrelevant charge and imposed penalty u/s. 271(1)(c) of the Act. The CIT(A) confirmed the same. Therefore, in such circumstances the ratio laid down by the Full Bench of Hon'ble High Court of Bombay in the case of Mohd. Farhan A. Shaikh (supra) is applicable in the present case. The impugned order passed by the CIT(A) is not justified. Thus, the penalty imposed by the AO and confirmed by the CIT(A) is cancelled and the ground raised by the assessee is allowed.

5. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 22nd February, 2022.

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

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 22nd February, 2022.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-13, Pune
4. The DGIT (Inv.), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune