IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)AND SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)

ITA No. 2023/MUM/2021
Assessment Year: 2013-14

S.F. Dyes/Firm First Floor, Hague Building, 9 Sprott Road ,Ballard Estate, Mumbai-400001. **PAN No. AACFS 5153 J** **Appellant**	**Vs.**	A.C. Circle 17(1), Bandra Kurla Complex Mumbai-400051. **Respondent**

Assessee by	:	Mr. Shiv Prakash, AR
Revenue by	:	Mr. Hoshang B. Irani, DR
Date of Hearing	:	05/05/2022
Date of pronouncement	:	11/05/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by assessee against the order dated 29.09.2021 passed by the Ld. Commissioner of Income Tax (Appeals) [National Faceless Appeal Centre] [in short 'the Ld. CIT(A)'] for assessment year 2013-14 in relation to levy of penalty

u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). The grounds raised by the assessee are reproduced as under:

> *1. That the learned CIT(A) has erred in law and facts in confirming the order dated 17.03.2020 of the AO levying penalty of Rs. 1081500 u/s 271(1) (c) of the Act.*
>
> *2. That the very initiation of the proceedings u/s 271(1) (c) was improper.*
>
> *(i) as there was no proposal for such action in the order u/s 154 which had become the final order for assessment purposes.*
>
> *(ii) as the show cause notice served was in a routine printed form without specifying as to the exact reason i.e. whether for furnishing of inaccurate particulars of income or concealment of income for which action u/s 271(1) (c) is initiated.*
>
> *3. That the proceedings have been initiated on account of the alleged furnishing of inaccurate particulars of income without pointing out a single inaccuracy in the particulars furnished and also by totally ignoring the meaning of inaccurate particulars as defined by the Honorable Supreme Court in Reliance Petro Products (322 IT 158) and other cases referred to him.*
>
> *4. That the learned A - the first successor officer had also initiated proceedings u/s 147 for the same reason i.e. of making donation of Rs. 20 Lacs to School of Human Genetics and Population Health but after going through the facts of the case as explained in assessee's letter dated 10.04.2017 the proceedings u/s 147 were dropped vide order dated*

13.06.2017. The order u/s 271(1) (c) having beenpassed in total disagreed of this fact is improper and requires to be quashed.

5. That the order passed by relying on the ratio of the cases facts of whole cases were entirely different from the facts of present case- is untenable and unsustainable.

2. Briefly stated, the facts of the case are that assessee filed return of income for the year under consideration on 29.09.2013 declaring total income of Rs.4,72,97,520/-. In the scrutiny assessment completed u/s 143(3) of the Act total income was assessed at Rs.4,87,97,530/- after making disallowance u/s 35(1)(ii) of the Act and penalty proceedings u/s 271(1)(c) of the Act were initiated for filing inaccurate particulars of income. In the assessment order, the Assessing Officer observed that assessee has claimed deduction for payment made to the 'School of Human Genetics and Population Health' u/s 35(1)(ii) of the Act. The Ld. Assessing Officer during the assessment proceedings, in order to verification of payment made by the assessee issued commission u/s 131 of the Act to the Investigation Wing, Kolkata. In the report filed by the Investigation Wing of the Kolkata, it was found that the

'School of Human Genetics and Population Health' was engaged in issuing certificate u/s 35(1)(ii) for claim of deduction and amount was being returned back in cash to the donors. The said School of Human Genetics and Population Health admitted during the proceedings u/s 131 of the Act that they had provided accommodation in terms of bogus deductions to the donors and they have refunded amount in cash after deducting service charges. These facts was confronted to the assessee and the assessee was asked to justify the deduction of claim to have been made, but no submissions were made before the Assessing Officer. The Assessing Officer disallowed the deduction of the claim of Rs.15,00,000/- in the assessment order, which was further rectified to Rs.35,00,000/- in order u/s 154 dated 25.11.2016 of the Assessing Officer. The appeal preferred by the assessee against disallowance made by the Assessing Officer was withdrawn by the assessee on 20.10.2016. In view of the fact, the Assessing Officer levied penalty u/s 271(1)(c) of the Act holding that the assessee in default for furnishing inaccurate

particulars of the income. The Ld. CIT(A) also uphold the penalty levied by the Assessing Officer.

3. We have heard rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. Before us, the Ld. counsel has submitted that the assessee voluntarily withdrawn the appeal and also offered to increase the amount of addition from Rs.15,00,000/- to Rs.35,00,000/- by way of seeking rectification and there was no default of furnishing inaccurate particulars of the income, therefore appeal of the assessee should be allowed. On the contrary, the Ld. DR relied on the order of lower authorities.

3.1 We find that the claim of the assessee of deduction u/s 35(1)(ii) has been disallowed by the Assessing Officer after due inquiry from the person who has issued certificate u/s 35(1)(ii) of the Act and said inquiry was duly confronted to the assessee. The assessee has failed to rebut the finding of the Assessing Officer and

even preferred to withdraw appeal on the quantum of disallowance.

The relevant finding of the Ld. CIT(A) are reproduced as under :

> *"4.1 I have carefully considered the grounds raised, written submissions made assessment order, order u/s 154 and the penalty order passed. Briefly, the facts of the case are that the Assessing Officer based his findings on Survey action where bogus donation racket was unearthed and statements given to the Investigation wing that the institute provided accommodation entries for donors to claim bogus deduction u/s 35(1)ii) of the IT Act. The Assessee had withdrawn the appeal filed before CIT (A) against Assessment Order. Assessee has filed the instant appeal aggrieved with the levy of penalty. especially as it claims that it had requested for an upward revision of the assessed income via rectification application and had requested for non-levy of penalty. All grounds are inter-connected and are taken up together.*
>
> *4.2 A survey was carried out by the investigation Wing, Kolkata on three institutions in matter facilitating bogus donations u/s.35(1)in) of the IT Act. It was found that the donor/beneficiaries in connivance with the institute with the help of brokers, entry operators/bogus donation syndicate and the donations were returned back to the donors in lieu of commission and the institute. The School of Human Genetics and Population Health had admitted that in lieu of service charge they have provided accommodation entries of bogus donation to the donors and they have refunded amount after deducting service charges. Assessee has given donation to School of Human*

Genetics and Population Health(SHGPH) and subsequently taken deduction u/s 35(1)li) of I.T. Act. Therefore, the claim of the taxpayer was disallowed u/s.35(1)ii) to the tune of Rs.35,00,000/-; and penalty proceedings us.271(1)c) were initiated separately for furnishing inaccurate particulars of income. The taxpayer preferred an appeal before the CIT (A) which was later withdrawn by the assessee and thereby the assessment order was confirmed.

4.3 The appellant has claimed that as it had furnished full details of the payment, produced the receipts of Rs. 20 lakhs, letter of confirmation regarding receipts of donation so its case was not that of furnishing inaccurate particulars of income. It has relied on various case laws in support of its stand. It also claimed that as it had suo motto sought rectification thereby increasing its assessed income by Rs. 20 lakhs and also that the resultant rectification order passed us 154 did not specity the initiation of penalty proceedings u/s 271(1) (c), thus the penalty is invalid.

4.4 It is observed that during survey on SHGPH by Kolkata Investigation Directorate, the institute had clearly accepted being involved in providing accommodation entry by way of donation receipts and returning the same back to the donors in cash after deducting their commission. The statements recorded of key personnel and post survey enquiries, as well as lacuna in the audit conducted clearly establish the modus operandi used for bogus donation claims u/s 35(1)yli). Moreover, the Brokers and the management admitted that no significant project was on. SHGPH also admitted to the modus operandi to the Settlement Commission. The AO had specifically asked the

taxpayer to submit copy of progress report of the specific project that the donation was made to, as the deduction is allowed only for specific projects whose progress is reported to the National Committee. The appellant could not provide the same. No submission to evidence the same has been made during appellate proceedings either.

4.5 The claim of the appellant that the initiation of the penalty proceedings was not made in the rectification order dated 25.11.2016 is meaningless as the initiation had been made in the assessment order where the finding of the disallowance of claim was discussed. Furthermore, it is not the case that the appellant requested for a rectification of the assessed income on its own motion. In fact, only after a show cause notice issued for levy of penalty u/s 271(1)(c) by the AO in August 2016, did the appellant give the entire details whereby the mistake apparent from record to the tune of 20Lakhs (on account of donation to SHGPH being Rs. 35 lakh not 15 lakh) was brought to the knowledge of the AO with the plea that as it had voluntary agreed to the addition and had also withdrawn the appeal before the CIT(A) against the addition, penalty may not be levied. This was not a bona fide disclosure, but an attempt to escape the penalty as the appellant requested the A not to levy penalty as it had voluntarily agreed to the addition of Rs. 20 lakhs. Penalty is to be levied in case of concealment or inaccurate particulars being furnished and not as a bargain for agreeing to an addition. Even if assessee agreed to addition with a condition that penalty could not be imposed, department is not precluded from initiating penalty proceedings was held in Khandelwal Steel & Tube Traders vs. ITO (2018] 95 taxmann.com 15 (Madras). In the case of the appellant, even the in-principle agreement to the

addition was not there. The case laws quoted by the appellant do not come to its help as the appellant was the beneficiary of the accommodation entry provided by the SHGPH which is clearly a fit case for levy of penalty. The action of the AO is upheld, and these grounds (1 and 2) are therefore rejected.

4.6 The appellant has claimed in Ground 3 that the proceedings u/s 147 of the IT Act were dropped thereby proving that no case of concealment or furnishing inaccurate particulars of income exist against the appellant. Proceedings for re-assessment u/s 147 are separate and independent; they are to be proceeded with only if some issue is left to be investigated or some new information is available with the AO which makes him form a belief that certain income had escaped assessment. It has no bearing on the levy of penalty for an issue on which assessment has already been completed with an addition. In view of the same, ground number 3 is rejected.

4.7 In the written submissions the appellant has stated that as the penalty was levied on the basis of the show cause notice u/s 274 which was in the printed format which has not been appropriately marked to show as to for which of the two defaults i.e. concealment of income or furnishing of inaccurate particulars on which the A.O. proposes to impose penalty and that this would lead to an inference as to non-application of mind thus vitiating the imposition of penalty. It is very important to state here that in the response dated 16.08.2016 to the show cause notice the appellant has itself relied that there was "no act of furnishing inaccurate particulars" which shows that there was no doubt in the mind of the appellant that the penalty was to be levied on account of furnishing inaccurate particulars, especially also

because in the assessment order itself the AO had discussed regarding the inaccurate particulars that attracted the initiation of penalty. In the assessment order itself - in the body of the order also the discussion was on furnishing inaccurate particulars of income. The claim of the appellant fails especially as there was certainty that penalty was being initiated and levied for furnishing of inaccurate particulars as is clearly evident from the reply of the taxpayer to the AO. More so, in view of decisions of the Hon'ble Apex Court in the case of Sundaram Finance Ltd. vs. (2018] 99 taxmann.com 152 (SC) and Bombay High Court in the case of Palkhi Investments & Trading Co. (P.) Ltd.vs. ITO (2016] 71 taxmann.com 322 (Bombay) penalty u/s 271(1)c) levied for furnishing inaccurate particulars of income is upheld."

In view of the above facts and circumstances and discussion made, the contention of the Ld. counsel of the assessee that no inaccurate particulars has been filed by the assessee are rejected being devoid of merit. Accordingly, we do not find any error in the order of Ld. CIT(A) and uphold the penalty sustained.

4. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 11/05/2022.

Sd/-	Sd/-
(RAHUL CHAUDHARY)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 11/05/2022
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai