

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकरअपीलसं. / ITA No.715/PUN/2019

निर्धारण वर्ष / Assessment Year: 2012-13

Association of Indian Forging Industry, 101/112, Nyati Millennium Off Nagar Road, Viman Nagar, Pune – 411 014. PAN: AAECA 8094 R	Vs	The Income Tax Officer, Ward-(2), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None.
Revenue by	Shri S P Walimbe – DR
Date of hearing	23/05/2022
Date of pronouncement	26/05/2022

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of Id.Commissioner of Income Tax(Appeals)-10, Pune dated 01.02.2019 for the Assessment Year 2012-13. as per the grounds of appeal on record.

2. The only grievance of the assessee in the grounds of appeal is levy of penalty under section 271(1)(c) of the Act. At the time of hearing before us, none appeared for the assessee.

3. Brief facts of the case as emerged out from the penalty order, statement of facts and other material available on record are that the assessee, Association of Indian Forging Industry (hereinafter referred to as appellant) is a not-for-profit company incorporated u/s 25 of the Companies Act, 1956 and is also registered u/s 12A of the I.T. Act 1961, therefore eligible for exemption u/s 11 of the Act. As per the memorandum of association, the

principal object of the appellant is to promote the interests of the forging industry in India. The appellant filed its return of income for the year under consideration on 28.09.2012 declaring total income at Rs. NIL after claiming exemption u/s 11 of the Act. Subsequently, the case of the appellant was selected for scrutiny through CASS and after considering the submissions of the appellant produced before the AO during the course of assessment proceedings, total income was assessed at Rs. 15,00,000/- vide order dated 30.03.2015 after making additions on account of accumulated income not utilized within the prescribed period of five years. Penalty proceedings were initiated separately against the appellant vide issue of notice u/s 274 r.w.s 271(l)(c) of the Act dated 30.03.2015 for furnishing inaccurate particulars in respect of such income. During the course of penalty proceedings, the appellant made submissions contending that the penalty shall not be levied as it has co-operated during the course of assessment and the mere omission to add back the accumulated income not utilized does neither amount to concealment nor deliberate furnishing of inaccurate particulars of income; it is just a bonafide mistake rather than a deliberate mistake. However, the AO on going through the contentions so raised held that the same is unacceptable and therefore levied penalty u/s 271(1)(c) of the Act at minimum rate i.e. 100% of the tax sought to be evaded, thereby raising demand at Rs.4,63,500/-.

4. We have perused the relevant documents on record and the orders of Sub-ordinate Authorities. The facts and circumstances have been taken into consideration and the submissions and Id.Departmental Representative(Id.DR) for the Revenue are also considered. That from record, it is conspicuous that

during the course of assessment proceedings, the Assessing Officer called for details from the assessee in respect of amount accumulated in the last Five Years and its consequent application. In response to which the assessee produced the necessary details.

5. On verification of the same by the Assessing Officer, it was found that the assessee had accumulated an amount of Rs.15,00,000/- in Financial Year(F.Y.) 2006-07. Considering the provisions laid down in Section 11 Clause 2 of the Act, it was obligatory on the part of the assessee to utilise the said fund up to the end of Financial Year 2011-12. Nevertheless the assessee failed to offer the same towards the end of F.Y. 2011-12 i.e. the relevant previous year, which was the last year of the time prescribed to utilise such amount. Further, the assessee failed to add back and disclose the said amount in its total income declared for the year under consideration in accordance with the provisions laid down for computation of income in Section 11 of the Act. This fact was brought to the notice of the assessee during the assessment proceedings and the same was accepted upon confrontation by the Assessing Officer. Accordingly, such amount was added back to the total income of the assessee. The Assessing Officer specifically made a note in Para 6 of the Assessment Order that penalty proceedings under section 271(1)(c) r.w.s 274 of the Act are initiated separately for filing inaccurate particulars of income. The Id.CIT(A) has observed in his detailed order whereby he has upheld the penalty that it is undisputable fact that the amount under question on which the penalty has been initiated had thereafter levied was remained to be disclosed in the total income by the assessee while filing the return of income

for the year under consideration. This fact has also been accepted by the assessee in its written submission filed. However, the assessee in contrast to the finding of the Assessing Officer has claimed in its submission that it was the assessee who pointed out the said mistake to the Assessing Officer during the course of assessment proceedings. However, the Id.CIT(A) makes a categorical finding that going through the relevant Para 6 of the assessment order, it is evident that no such suo-moto acceptance was made by the assessee during the assessment proceedings instead, it was the Assessing Officer who upon verification of the details filed by the assessee found the said mistake and brought it to the notice of the assessee who in turn accepted the fact when confronted by the Assessing Officer. That further no evidentiary materials has been brought on record by the assessee to prove its claim that such mistake had been pointed out suo-moto by it during the assessment proceedings. Therefore, the claim of the assessee that it had furnished all the details of income and furnished particulars of accumulated fund and its non-application in the return of income for the said year being without any legitimate documentary evidence was rejected. That from the findings of the Id.CIT(A), Two facts emerges out i) that the amount under question on which penalty was initiated and thereafter levied remained to be disclosed in the total income by the assessee while filing his return of income for the year under consideration; ii) the assessee could not establish his bonafideness for not disclosing such details in the return of income and no documentary evidence were furnished in its support.

6. Before us also, as already mentioned, none appeared for the assessee, even though the notice of hearing was served at the given address and from the entire case records, it is an admitted fact that the assessee had accumulated amount of Rs.15 lakhs in F.Y. 2006-07 and as per provisions of the Act, it was obligatory on the part of the assessee to utilise the said fund up to the end of F.Y. 2011-12. Further, the assessee failed to add back and disclose the said amount in its total income declared for the year under consideration in accordance with the provisions laid down in computation of income in Section 11 of the Act. This non-disclosure has also been accepted by the assessee. In view of the examination of factual matrix in this case, we do not find any reason to interfere with the findings of the Id.CIT(A) which is hereby upheld. The grounds of appeal of the assessee are dismissed.

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

Order pronounced in the open Court on 26th May, 2022.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th May, 2022/ SGR*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-Central, Pune.
4. The Pr. CIT cocerned, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.