

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

**BEFORE SHRI M. BALAGANESH (ACCOUNTANT MEMBER) AND  
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)**

**ITA No. 2331/MUM/2021  
Assessment Year: 2010-11**

Dy. Commissioner of Income Tax,  
Central Circle-8(1),  
Room No. 656, 6<sup>th</sup> floor, Aayakar  
Bhavan, M.K. Road,  
Mumbai-400020.

**Vs.** M/s Rational Art & Press Pvt.  
Ltd.,  
21, Nirmal, Nariman Point,  
Mumbai-400021.

**Appellant**

**PAN No. AAACR7185E  
Respondent**

Revenue by : Mr. T. Shankar.DR  
Assessee by : Mr. Siddharth Kothari. AR

Date of Hearing : 18/05/2022  
Date of : 26/05/2022  
pronouncement

**ORDER**

**PER PAVANKUMAR GADALE (J M ):**

The Revenue has filed an appeal against the order of Commissioner of Income Tax (Appeals)-50, Mumbai [in short 'the Ld. CIT(A)'] passed u/s 271(1)(c) and 250 of the Income Tax Act, 1961 (in short 'the Act'). The Revenue has raised the following grounds of appeal:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in deleting penalty 271(1)(c) of the Act, ignoring the facts that the assessee had deliberately concealed the particulars of the income.*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in holding that penalty u/s 271(1)(c) could be deleted merely on the basis of defect in notice u/s 274 of the Act, ignoring the pronouncement of the Hon'ble High Court of Gujarat in the case of M/s Snita Transport (P.) Ltd. v. Assistant Commissioner of Income Tax whereby the Hon'ble High Court has stated that though the Assessing Officer was ambivalent regarding under which head the penalty was being imposed namely for concealing the particulars of income or furnishing inaccurate particulars, Assessing Officer was clear and penalty was imposed for concealing particular of income.*

2. The brief facts of the case are that the assessee is engaged in the business as Hi-tech capital intensive agro company and filed the return of income for the assessment year 2010-11 disclosing a total income of Rs.8,11,38,570/-. In the assessment proceedings, the Assessing Officer(A.O) has considered the facts with respect to(i) bogus purchases and made the addition of Rs.81,328/- as the genuineness of transactions were doubted (ii) similarly made

addition on account of lease rent of Rs.7,71,75,000/-and assessed the total income of Rs.15,83,94,898/- and passed the order u/s 143(3) of the Act dated 26.03.2013.

3. Aggrieved by the A.O. order, the assessee has filed an appeal before the Ld. CIT(A). The Ld. CIT(A) has confirmed the disallowance of bogus purchases and in respect of addition of lease rent,the CIT(A) has directed the Assessing Officer to adopt Annual let-out value(ALV) of the property as Rs.16,34,10,000/- and partly allowed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Tribunal, whereas the Hon'ble Tribunal in ITA No. 7615/M/2016 & 7673/M/2016 dated 28-02-2019 has upheld the decision of the Ld. CIT(A) on the addition on account of lease rent and in respect of bogus purchases transactions has restricted addition to the extent @ 12.5% and partly allowed the appeal.

4. The Assessing Officer has initiated penalty proceedings. Whereas, the Assessing Officer relied on the observations of the scrutiny assessment and explanations furnished by the assessee. Finally,

the Assessing Officer was not satisfied with the explanations in respect of additions in the scrutiny assessment and observed that it is a fit case for levy of penalty for concealing the particulars of income and passed the order u/s 271(1)(c) of the Act dated 31.01.2020 and the penalty order was passed after the receipt of the Hon'ble Tribunal order. Whereas the Assessing Officer earlier has passed the order u/s 271(1)(c) of the Act dated 31.03.2013 for the same assessment year for furnishing inaccurate particulars of income. Whereas in the subsequent penalty order, which was passed on 31.01.2020, the A.O. has observed that the Hon'ble ITAT vide order dated 21.03.2019 has restricted the addition of bogus purchases to the extent of 12.5% and upheld the decision of the CIT(A) on the issue of addition on account of leases rent.

5. Aggrieved by the penalty order, the assessee has filed an appeal before the Ld. CIT(A). The Ld. CIT(A) considered the grounds of appeal, findings of the Assessing Officer in the scrutiny assessment, submissions of the assessee and the legal issue of validity of issue of notice where the Assessing Officer has initiated the penalty notice without specifying nature/ reasons for initiation of penalty.

whereas the Ld. CIT(A) in the course of hearing has called for the details from the A.O. on the issue of initiation of penalty u/s 271(1)(c) and the Ld. CIT(A) has considered the facts, circumstances judicial decisions and the jurisdictional Hon'ble High Court decision and deleted the penalty and allowed the assessee's appeal.

6. Aggrieved by the CIT(A) order, the Revenue has filed an appeal before the Hon'ble Tribunal. At the time of hearing the Ld.DR submitted that the Ld. CIT(A) erred in deleting the penalty on the technicalities of the notice issued and supported the penalty order of the Assessing officer.

7. Contra the Ld.AR submitted that the assessee has submitted information before the AO and the notice issued for levy of penalty is invalid and the CIT(A) has correctly deleted the penalty relying on the facts and judicial decisions and the Ld.AR relied on the legal decisions and supported the order of the CIT(A) .

8. We heard the rival contentions and perused the material on record. The sole crux of the disputed issue is that the CIT(A) has

erred in deleting the penalty, were the assessee has challenged in the appellate proceedings on the levy of penalty being legal issue as the A.O. has not applied his mind and non striking of charge in the penalty notice i.e. whether the charge is for concealment of income or furnishing of in accurate particulars of income. We find the Jurisdictional Honble High Court of Bombay in Mohd Farhan A Shaikh Vs. DCIT in Tax Appeal No. 51 to 57 of 2012 dated 11.03.2021. (2021) 125. taxmann.com 253 (Bombay) has dealt on this disputed issue of not striking off charge in the penalty notice would vitiate the penalty proceedings. The Hon'ble High Court has made observations at page 56 as under:

*“180. One course of before us is curing a defect in the notice by referring to the assessment order, which may or not contain reason for the penalty proceedings. The other course of action is the prevention of defect in the notice – and that prevention takes just a tick mark. Prudence demands prevention is better than cure. Answers: Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Sec. 271(1)(c), does a mere defect in the notice – not striking off the irrelevant matter vitiate the penalty proceedings? 181. It does. The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against*

*the assessee. But that translates into action only through the statutory notice under Sec. 271(1)(c), r.w.s. 274 of the Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a deferent statutory scheme that remains distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.*

*182. More Particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee's favour."*

9. We have considered the facts, circumstances and ratio of the decision of Honble High Court and are of the view that in the present case, the CIT(A) has deleted the penalty as the A.O has not strike off the charge for levy of penalty for concealment of income or for furnishing of inaccurate particulars of income. The Ld.DR could not controvert the findings of the CIT(A) with any new cogent material evidence or information to take a different view. Accordingly we do not find any infirmity in the order of the CIT(A), who has considered the facts, provisions of law and passed a

reasoned and speaking order and uphold the same and dismiss the grounds of appeal of the Revenue.

10. In the result, the appeal filed by the revenue is dismissed.

**Order pronounced in the open Court on 26/05/2022.**

Sd/-

**(M. BALAGANESH)  
ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER**

Mumbai;

Dated: 26/05/2022

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.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**

		Date	Initials	
	Original dictation pad is enclosed at the end of file			
1.	Draft dictated on: Computer	23.05.2022		Sr. PS/PS
2.	Draft placed before author:	24.05.2022		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	File sent to the Bench Clerk:			
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			
10.	Date of dispatch of Order:			