

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE

**SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

Sr. No.	I.T.A. No.	A.Y.	Appellant	Respondent
1.	386/PUN/2019	2012-13	Poonawalla Finvest & Agro Pvt. Ltd. 16-B/1 Sarosh Bhawan, Dr. Ambedkar Road, Pune Camp, Pune-411 001 PIN; AAAC6842Q	The Dy. CIT Central Circle 1(1) Pune.
2.	1280/PUN/2019	2012-13	Villoo Greenfield Farms 16-B/1 Sarosh Bhawan, Dr. Ambvedkar Road, Camp, Pune-411 001 PAN: AACFG5039H	-do-

Appellants by : Shri Nikhil Pathak
Respondent by : Shri Subhas Dabade
Date of Hearing : 12-05-2022
Date of Pronouncement : 13-05-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JM

Both these appeals preferred by different assessee emanates from separate orders of the CIT(A)-11, Pune, dated 19-12-2018 and 04-07-2019 respectively for A.Y. 2012-13 as per the grounds of appeal on record.

2. At the very outset, the Id. Counsel submitted before us that in respect of both these cases, the issue involved and the facts and circumstances are absolutely identical. These cases are therefore, heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The Id. Counsel further submitted that the only grievance of the assessee is imposition of penalty u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as "the Act" for short). He demonstrated with ample evidences that initiation of penalty u/s 271(1)(c) of the Act has been done for furnishing of inaccurate particulars of income whereas the imposition of penalty as per the penalty order has been done for concealment of income and notice u/s 274 r.w.s. 271(1)(c) for imposing penalty has been issued for both the limbs

i.e. for furnishing of inaccurate particulars of income and concealment of income.

4. We find that on identical set of facts, Pune Tribunal in *ITA No. 1547/PUN/2017 for A.Y. 2013-14 for A.Y. 2013-14 in the case of ACIT Cir. 3, Aurangabad Vs. Shri Vithalrao Rangnathrao Ambarwadikar*, order dated 26-04-2021 has placed reliance on Hon'ble Full Bench decision of Jurisdictional High Court in the *Mohd. A. Shaikh Vs. Dy. Dy. CIT (2021) 125 taxmann.com 253 (Bom)* and another decision of Hon'ble Jurisdictional High Court in the case of *Pr. CIT Vs. Golden Peace Hotels and Resorts (P) Ltd. (2021) 124 taxmann.com 248 (Bom)* and has held that in the notice issued u/s 274 of the Act, if the inapplicable portions were not struck off in such penalty notice, the penalty was vitiated. That even SLP filed by the Department against the judgment of Hon'ble Bombay High Court in the case of *Golden Peace Hotels and Resorts (P) Ltd. (supra)* was dismissed by the Hon'ble Supreme Court in the case of *Pr. CIT Vs. Golden Peace Hotels and Resorts (P) Ltd. (2021) 124 taxmann.com 249 (SC)*. The relevant paragraph of the Tribunal order is extracted as follows:

"2. Briefly stated, the facts of the case are that the assessee is an individual engaged in the business of petrol pump. A return was filed declaring certain income. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee earned remuneration of Rs.4 lakh from a firm, M/s. Ambarwadikar and Co., which was credited to the capital but not offered for taxation. On being called upon to explain the reasons for such non-disclosure of income in the return, the assessee offered the said amount for taxation. In the same manner, the assessee earned capital gain of Rs.9,92,38,664 on the transfer of certain lands to the Deogiri Nagari Sahakari Bank Ltd., but did not offer any capital gain in the return of income. When the assessee's attention was drawn to this fact, he again agreed for the addition. Thus, the AO made additions, inter alia, for the above amounts on the basis of admission by the assessee. Subsequently, penalty was imposed u/s 271(1)(c) of the Act after issuing notice u/s 274 of the Act. The ld. CIT(A) observed that the notice issued by the AO u/s 274 contained both the limbs viz., concealment of income and furnishing of inaccurate particulars of income and none of the two was struck off, as against the penalty order having been passed only for concealment of income. Relying on certain decisions, he deleted the penalty of Rs.2.26 crore imposed by the AO, against which, the Revenue has approached the Tribunal.

3. We have heard the rival submissions through Virtual Court and scanned through the relevant material on record. A copy of the notice issued u/s 274 of the Act has been placed in the appeal folder, from which it is discernible that the AO did not strike off either of the two limbs viz., concealment of the particulars of income; and furnishing of inaccurate particulars. However, the penalty order came to be passed by holding that the assessee concealed his income. Recently, a full Bench of Hon`ble Bombay High Court in Mohd. Farhan A. Shaikh Vs. Dy.CIT (2021) 125 taxmann.com 253 (Bom) considered this very issue. Answering the question in affirmative, the Full Bench held that a defect in notice of not striking the relevant words vitiates the penalty even though the AO had properly recorded the satisfaction for imposition of penalty in the order u/s 143(3) of the Act. In another judgment, the Hon`ble Bombay High Court in Pr.CIT Vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxmann.com 248 (Bom) also took similar view that where inapplicable portions were not struck off in the penalty notice, the penalty was vitiated. SLP of the Department against this judgment has been recently dismissed by the Hon'ble Supreme Court in Pr.CIT Vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxmann.com 249 (SC). In view of the overwhelming position, it is clear that where the charge is not properly set out in the notice u/s 274 viz., both the limbs stand therein without striking off of the inapplicable limb, but the penalty has been, in fact, levied for one of the two, such a penalty order gets vitiated.

4. Turning to the facts of extant case, we find from the notice u/s 274 that the O did not strike out one of the two limbs though the penalty was imposed with reference to the first one only, namely, concealment of particulars of income. In such a panorama, the penalty order is bad in law. We, therefore, countenance the view taken by the Ld. CIT(A) in deleting the penalty”.

5. Respectfully following the aforesaid judicial pronouncements even without going into merits of the case just on the very legal premise that the notice issued u/s 274 r.w.s. 271(1)(c) of the Act i.e. in the penalty notice the inapplicable portions were not struck off the entire levy of penalty, therefore, is vitiated and is bad in law. We therefore, set aside the orders of the Id. CIT(A) and direct the A.O to delete the penalty from the hands of the respective assessees.

6. In the result, both the **appeals of the respective assessees as captioned above are allowed.**

Order pronounced in the open Court on this 13th day of May 2022.

Sd/-

sd/-

(R.S. SYAL)
VICE PRESIDENT

(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, this 13th day of May 2022
 Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT , (Central) Pune
4. The CIT(A)-11, Pune
5. The D.R. ITAT 'B' Bench, Pune.
5. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	12-05-2022	Sr.PS
2	Draft placed before author	12-05-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS		Sr.PS
6	Kept for pronouncement on	13-05-2022	Sr.PS
7	Date of uploading of order	13-05-2022	Sr.PS
8	File sent to Bench Clerk	30-05-2022	Sr.PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		