

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

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

ITA Nos. 1857 & 1858/PUN/2018

निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

Maharashtra Academy of Engineering and Educational Research, S.No.124, Ex-Serviceman Colony, Paud Road, Kothrud, Pune – 411029 PAN: AAAAM1206F	Vs.	ITO, Ward-11(1), Pune
Appellant		Respondent

ITA Nos. 1905, 1906 & 1907/PUN/2018

निर्धारण वर्ष / Assessment Years : 2008-09, 2009-10 & 2010-11

DCIT (Exemptions) Circle, Pune	Vs.	Maharashtra Academy of Engineering and Educational Research, S.No.124, Ex-Serviceman Colony, Paud Road, Kothrud, Pune – 411029 PAN: AAAAM1206F
Appellant		Respondent

Assessee by
Revenue by

Shri Nikhil Pathak
Shri Sardar Singh Meena

Date of hearing

24-06-2022

Date of pronouncement

27-06-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This batch of five appeals assails the common order passed by the Id. CIT(A) on 27.9.2018 partly confirming the penalty

imposed by the Assessing Officer (AO) u/s.271(1)(c) of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment years 2008-09, 2009-10 and 2010-11. Since common issues are involved in these appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

A.Y. 2008-09 :

2. Tersely stated, the facts of the case are that the assessee was registered under the Bombay Public Trust Act, 1950 in the year 1983 and has been engaged in running educational Institutions. Return was filed declaring total income at Rs. Nil. The Assessing Officer (AO) found that the assessee did not have any exemption u/s.10(23C)(vi) of the Act and had also violated the provisions of Section 13 of the Act making itself ineligible for the benefit of exemption u/s.11. He took note of the assessee's Income and Expenditure account for the year under consideration depicting net profit at Rs.24,40,27,170/-. By taking this amount as the base figure, he added back the expenses incurred on World Peace Centre amounting to Rs.3,93,585/- and also Foreign Tour expenses amounting to Rs.13,65,811/- for determining the total income at Rs.24,57,86,566/-. No relief was allowed in the first

appeal. The Tribunal, vide its combined order dated 23-05-2017 passed u/s.254(1) for the assessment years 2008-09, 2009-10 and 2010-11, overturned the assessment order by holding that the assessee was otherwise entitled to exemption u/s.11 of the Act, but such exemption was not to be allowed on two items, viz., foreign travelling expenses incurred in violation u/s.13(1)(c) of the Act amounting to Rs.5,81,322/-, and certain donations amounting to Rs.18,62,575/- which the assessee could not establish as corpus donations. Giving effect to the order passed by the Tribunal, the AO, vide his order dated 25-09-2017, determined total income at Rs.24,43,897/- comprising of the above two items, namely, foreign travelling expenses of Rs.5.81 lakh and donations of Rs.18.62 lakh. Before the taking up of the quantum appeal by the Tribunal, the AO espoused penalty proceedings u/s.271(1)(c) and imposed penalty of Rs.7,52,10,690/- on the amount of total income determined by him in his order passed u/s.143(3) at Rs.24.57 crore vide his order dated 13-03-2014. The assessee preferred appeal before the Id. CIT(A), who held that the penalty could be levied only on the additions confirmed by the Tribunal in quantum proceedings and accordingly directed the AO to recompute the penalty only on the

additions confirmed by the Tribunal as per the order passed by him giving effect to the order of the Tribunal u/s.254 of the Act. The Id. CIT(A), however, directed to delete the penalty on the additions which stood deleted by the Tribunal order. This is how, both the sides have approached the Tribunal on their respective stands.

3. We have heard both the sides and gone through the relevant material on record. The Revenue has placed no material before us to demonstrate that the order passed by the Tribunal in quantum proceedings has been reversed or modified by the Hon'ble High Court in any manner. In that view of the matter, the amount of income added by the AO but deleted by the Tribunal, cannot be considered for imposition of penalty for the simple *raison d'etre* that no such addition exists warranting the penalty. The impugned order is countenanced to that extent.

4. Now, coming to the sustenance of the penalty by the Id. CIT(A), it is seen that the penalty has been restricted to the additions consisting of foreign travel expenses at Rs.5.81 lakh, being, violation of section 13(1)(c) of the Act and donations of Rs.18.62 lakh which were claimed by the assessee as corpus donation but could not be so established. These two

disallowances are in the realm of 'furnishing of inaccurate particulars of income' in the context of imposition of penalty u/s.271(1)(c) of the Act. It is pertinent to note that the AO determined total income of the assessee at Rs.24.57 crore by considering the net profit as shown in the Income and Expenditure account at Rs.24.40 crore added by the disallowance of two expenses. The amount of profit taken by the AO as the starting point for determination of total income also includes the amount of donations received by the assessee credited to the Income and Expenditure account. Thus, it is overt that the additions made by the AO to the tune of Rs.24.57 crore, being, the total income computed by him as against Nil income returned by the assessee, fall in the territory of 'furnishing of inaccurate particulars of income' in the context of section 271(1)(c) of the Act. To put it differently, the amount of additions made by the AO while computing total income and the amount of additions which finally constituted the bedrock for imposition of penalty are only in the nature of 'furnishing of inaccurate particulars of income' and have no relation whatsoever with the 'concealment of particulars of income'.

5. The ld. AR invited our attention towards a copy of notice dated 31-12-2010 issued by the AO u/s.271(1)(c) read with section 274 of the Act referring to both the limbs, viz., “concealed the particulars of your income and furnished inaccurate particulars of income.” This notice was issued pursuant to the assessment order passed on that very date itself. The penalty order, in para 3.1, passed by the AO refers to a letter issued by him on 11-01-2014, whose copy has been placed on record. This letter starts with initiation of penalty proceedings u/s.271(1)(c) r.w.s. 274 with reference to notice dated 31-12-2010. Thereafter, it fixes the date of hearing for the imposition of penalty. This shows that the AO issued the only notice u/s 274 immediately after the passing of the assessment order and did not render a specific finding in that as to whether the items of additions, making base for the imposition of penalty, were in the nature of concealment of particulars of income or furnishing the inaccurate particulars of income.

6. The full Bench of Hon“ble Bombay High Court in *Mohd. Farhan A. Shaikh Vs. Dy.CIT (2021) 125 taxmann.com 253 (Bom)* has considered this very issue. Answering the question in affirmative, the Full Bench held that a defect in notice of not

striking out the irrelevant words vitiates the penalty even though the AO had properly recorded the satisfaction for the 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, it was vitiated. The SLP of the Department against this judgment has since been dismissed by the Hon'ble Supreme Court in *Pr.CIT Vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxmann.com 249 (SC)*.

7. In view of the overwhelming legal position on this score, it is manifest that where the charge is not properly set out in the notice u/s 274, viz., both the limbs stand therein without striking off the inapplicable one, if any, the penalty order gets vitiated. Turning to the facts of the extant case, we find from the notice u/s 274 of the Act that the AO retained both the limbs, whereas penalty was imposed only with reference to one of them, namely furnishing of inaccurate particulars of income. Respectfully following the above referred Full Bench judgment of the Hon'ble jurisdictional High Court, we overturn the impugned order on this legal issue and direct to delete the penalty imposed by the AO.

8. In the result, the appeal of the Revenue is dismissed and that of the assessee is allowed.

A.Y. 2009-10 :

9. The facts of the appeals filed by the Revenue as well as the assessee for the year under consideration are similar to those of A.Y. 2008-09. The AO did not allow the benefit of exemption u/s.11 of the Act and computed the total income at Rs.33.54 crore by starting with the amount of net profit as per recasted Income and expenditure account amounting to Rs.33.46 crore and thereafter adding the expenses incurred on World Peace Centre at Rs.2.59 lakh and foreign tour expenses at Rs.5.64 lakh. The quantum appeal preferred by the assessee for the year under consideration before the Tribunal got disposed of by the consolidated order in the same way as that for the A.Y. 2008-09. The Tribunal, for the A.Y. 2009-10 also, restored the benefit of exemption u/s.11 and made similar two disallowances, namely, foreign travel expenses amounting to Rs.5,64,227/- for violation u/s.13(1)(c) and donations amounting to Rs.3.23 lakh. Giving effect to the order passed by the Tribunal, the AO, vide his order dated 04-01-2019, determined total income at Rs.8,87,227/-. However, the AO imposed penalty on the total income

determined by him in the order passed u/s.143(3) immediately after the passing of the order by the Id. CIT(A) in quantum proceedings. The amount of penalty was determined at Rs.10.36 crore. When the penalty order came up for challenge before the Id. CIT(A), he directed the AO to restrict the penalty on the amount of additions sustained by the Tribunal. This has led both the Revenue as well as the assessee to file cross appeals before the Tribunal.

10. After considering the rival submissions and perusing the relevant material on record, we find that the order passed by the Tribunal in quantum proceedings has not been shown to have disturbed by the Hon'ble High Court in any manner. The additions that have been deleted by the Tribunal cannot obviously be considered for the purpose of imposition of penalty u/s.271(1)(c) of the Act as they no more exist. Insofar as the sustenance of penalty is concerned, we find that the AO issued notice u/s.274 on 18-11-2011 by mentioning that the assessee concealed the particulars of income and furnished inaccurate particulars of income thereby keeping both the limbs of section 271(1)(c) of the Act intact before imposing penalty vide his order dated 13-03-2014. Prior to that, the AO issued a letter dated

11-01-2014 to the assessee, which is on same lines as was for the immediately preceding assessment year, having no reference to any specific limb of section 27(1)(c) on the basis of which penalty was being imposed. Thus, it is ingrained that the facts and circumstances for this year are identical to those of the preceding year. Following the reasoning given herein above, we hold that the very initiation of penalty proceedings is invalid and hence, the consequential penalty cannot stand. The same is directed to be deleted.

11. In the result, the appeal of the assessee is allowed and that of the Revenue is dismissed.

A.Y. 2010-11 :

12. This appeal by the Revenue is directed against the order passed by the CIT(A)-10 on 27-09-2018 deleting the penalty u/s.271(1)(c) of the Act in relation to the items of additions which were deleted by the Tribunal in the quantum proceedings.

13. Both the sides are in agreement that the facts of this appeal are *mutatis mutandis* similar to those of Revenue's appeals for the immediately preceding two years. Following the view taken herein above, we uphold the impugned order in deleting the

penalty imposed by the AO u/s.271(1)(c) of the Act in respect of the items of additions deleted by the Tribunal.

14. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 27th June, 2022.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 27th June, 2022
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-10, Pune
4. The Pr.CCIT, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /
DR 'B', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	24-06-2022	Sr.PS
2.	Draft placed before author	27-06-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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