

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

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.277/PUN/2019
निर्धारणवर्ष / Assessment Year : 2013-14

The Assistant Commissioner of Income Tax, Circle-11, Pune.	Vs	M/s.Hindumal Balmukund Investment Co. Pvt. Ltd., 2 nd Floor, Lohia Jain House, Bhandarkar Road, Shivaji Nagar, Pune – 411004 PAN: AAACH 4226 Q
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri V L Jain – AR
Revenue by	Shri S P Walimbe – DR
Date of hearing	28/06/2022
Date of pronouncement	29/06/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Revenue is directed against the order of Id.Commissioner of Income Tax(Appeals)-1, Pune under section 271(1)(c) of the Income-tax Act, 1961 (hereinafter called as ‘the Act’) for the Assessment Year 2013-14 dated 13.11.2018. The Revenue has raised the following grounds of appeal:

- “1. *The order of the Ld.CIT(A) is contrary to law and to the facts and circumstances of the case.*
2. *The Ld.CIT(A) has erred in law and on the facts and the circumstances of the case in directing to delete the penalty levied u.s,271(1)(c) of the I.T.Act, 1961 on the issues related to disallowances out of Excess Provision of Expenses.*

3. *For these and such other grounds as may be urged at the time of hearing, the order of the Ld.CIT(A) may be vacated and that of AO restored.*
4. *The appellant craves to add, amend, alter or delete any of the above ground of appeal during the course of appellate proceedings before the Hon'ble Tribunal."*

2. Brief facts of the case are that the Penalty under section 271(1)(c) of the Act has been levied against the assessee for A.Y.2013-14. The Assessee filed an appeal before Commissioner of Income-tax(Appeals), who has deleted the penalty levied by the Assessing Officer.

3. Aggrieved by the order of the ld.CIT(A), the Revenue has filed appeal before this Tribunal. The Ld.Departmental Representative(ld.DR) for the Revenue took us through the Penalty Order and Copy of Notice u/s.271(1)(c) of the Act. The ld.Authorised Representative of the assessee submitted that penalty notice is defective, hence, penalty is not maintainable.

4. The only issue is levy of Penalty of Rs.1,35,00,000/- u/s.271(1)(c) of the Act. On perusal of the notice u/s 271(1)(c) dated 29.03.2016 issued by the Dy.CIT, Circle-11, Pune, it is observed that the AO has not struck the appropriate words i.e. Concealed the particulars of Income or furnished Inaccurate particulars.

4.1 The Hon'ble Bombay High Court has held in the case of **Ganga Iron & Steel Trading Co. v/s Commissioner of Income**

Tax. [2022] 135 taxmann.com 244 (Bombay) order dated 22.12.2021 as under:

Quote, “10. We find that the law as laid down by the Full Bench applies on all fours to the facts of the present case as in the show cause notice dated 12-2-2008, the Assistant Commissioner of Income-tax is not clear as to whether there was concealment of particulars of income or that the Assessee had furnished inaccurate particulars of income. We therefore find that issuance of such show cause notice without specifying as to whether the Assessee had concealed particulars of his income or had furnished inaccurate particulars of the same has resulted in vitiating the show cause notice.

Heavy reliance was placed by the learned counsel for the Revenue on the decision in Mak Data (P.) Ltd. (supra) to urge that the penalty contemplated by section 271 (1) (c) of the said Act was in the nature of civil liability and mens rea was not essential therein. The decision in Dilip N. Shroff (supra) having been held as not laying down good law in Dharmendra Textile Processors Ltd. (supra), it was submitted that the show cause notice issued in the present proceedings was liable to be upheld. It may be noted that all the decisions relied upon by the learned counsel for the Revenue were considered by the Full Bench while answering the issues referred to it on reference. The Full Bench having considered these decisions and having answered the question as regards defect in the notice under section 271(1)(c) of the said Act resulting in vitiating the penalty proceedings, we find ourselves bound by the answers given by the Full Bench. It would not be permissible for us to disregard this aspect and take a different view of the matter.

Accordingly substantial question of law no. III is answered by holding that since the show cause notice dated 12-2-2008 does not

indicate whether there was concealment of particulars of income or furnishing of incorrect particulars of such income, the same would vitiate the penalty proceedings.” Unquote.

4.2 In the case under consideration also the AO has not struck the appropriate words in the penalty notice. Therefore, respectfully following the Hon’ble jurisdictional High Court’s order, it is held that the penalty u/s.271(1)(c) of the Act, is not maintainable. Hence, the Assessing Officer is directed to delete the penalty under section 271(1)(c) of the Act, accordingly, grounds of appeal raised by the Revenue are dismissed.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 29th June, 2022.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 29th June, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.