

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.2445/Mum/2021
(Assessment Year 2009-10)

ITA No.2439/Mum/2021
(Assessment Year 2012-13)

ITA No.2444/Mum/2021
(Assessment Year 2011-12)

ITA No.2443/Mum/2021
(Assessment Year 2010-11)

Shailesh Mehta 27/9, K.K. Building Kandhawadi Mumabi-400 004	Vs.	CIT(A) NFAC, Delhi
PAN/GIR No. : AIRPM5320N		
Appellant	..	Respondent

Appellant by :	Shri. D. B. Shah. AR
Respondent by :	Shri. Hoshang B. Irani.DR

Date of Hearing	06.07.2022
Date of Pronouncement	07.07.2022

आदेश / O R D E R

PER BENCH:

These are the four appeals filed by the assessee against the separate orders of Commissioner of Income Tax (Appeals)(CIT(A))- National Faceless Appeal Centre (NFAC),

Delhi passed u/s 271(1)(c) and 250 of Income Tax Act, 1961.

2. Since the issues involved in these appeals are identical and similar, hence are clubbed, heard and consolidated order is passed. For the sake of convenience, we shall take-up the ITA No. 2445/Mum/2021 for the Asst. Year 2009-10 as a lead case and the facts narrated. The assessee has raised the following grounds of appeal:

“1. Against penalty of Rs.2,03,650/- u/s 271(1) (c) of the Income Tax Act, 1961.

2. 1. On the facts and circumstances of the case and in law, the CIT(A)-30 National Faceless Appeal Centre [hereinafter referred to as “CIT(A)”] erred in confirming the penalty of Rs.2,03,650/- levied u/s 271(1)(c) of the Income tax Act, 1961.

2. Your appellant humbly submits that the notice u/s 274 r.w.s 271(1)(c) has not specified the exact charge for which the penalty was proposed to be levied. On this ground alone, the penalty is not sustainable in law.

3. Your appellant respectfully submits that the CIT(A) has not considered the fact that addition, with reference to which the penalty was levied, is reduced substantially by the department and, hence, the addition does not represent “furnishing of inaccurate particulars of income.” The penalty, cannot be sustained on this count also.

4. In view of (2) and (3) above the appellant, prays that the penalty of Rs.2,03,650/- levied u/s 271(1)(c) be kindly deleted.”

3. The brief facts of the case is that the assessee is engaged in the business of trading and reseller in ferrous and non ferrous metals and filed the return of income for the Assessment Year 2009-10 on 25.09.2009 disclosing a total income of Rs.2,55,302/- and the return of income was processed u/s 143(1) of the Act. The Assessing Officer has received the information from the DGIT(Inv.), Wing, Mumbai that the assessee has obtained the benefit of the accommodation entries from the parties listed in the website of the Sales Tax Department Maharashtra. The assessee has obtained the accommodation entries/bogus purchases from 11 parties aggregating to Rs.1,01,39,508/-, therefore, the Assessing Officer has reason to believe that the income has escaped the Assessement and issued notice u/s 148 of the Act on 11.02.2014.

4. In compliance of notice u/s 148 of the Act. The assessee has filed a letter to treat the return of income filed on 25.09.2009 as due compliance. Subsequently the notice U/sec142(1) of the Act along with the questionnaire was issued. The Assessing Officer to test check the genuineness of purchases

has issued the notice u/s 133(6) of the Act on the parties and the said notices were returned unserved by the postal authorities with the remarks “Not Known/Left”. Further the A.O. has issued notice on the assessee to substantiate the transactions with the purchase bills, sales corresponding to transactions, statements, ledger accounts and sales bills etc. The assessee has submitted the details of the purchases. The A.O. was not satisfied with the explanations and the information as discussed on the issue in para-11 of the assessment order and relied on the judicial decisions and dealt on the profit element in the transactions and estimated income @12.5% of bogus purchases and assessed the total income of Rs.15,22,740 and passed the order u/s 143(3) r.w. section 147 of the I.T. Act on 17.03.2015.

5. Subsequently, the A.O. has initiated penalty proceedings u/s 271(1)(c) of the Act. In the penalty proceedings the Assessee has filed the explanations and also mentioning the facts on the quantum addition made by the A.O. estimating @12.5%. Where on further appeal, the CIT(A) vide order dated 12.02.2018, has restricted the estimated income @

6.5% as against 12.5% made by the A.O. But the A.O was not satisfied with the explanations and is of the opinion that the assessee has concealed the particulars of income and furnishing inaccurate particulars of income and levied the penalty and passed order u/s 271(1)(c) of the Act.

6. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A). In the appellate proceedings the assessee has filed the submissions. Whereas the CIT(A) was not satisfied with the explanations and confirmed the penalty levied by the Assessing officer and dismissed the appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Honble Tribunal.

7. At the time of hearing, the Ld.AR of the assessee submitted that the assessee has cooperated in submitting the information before the A.O. Further the notice issued for levy of penalty is invalid and defective and supported the submissions with the judicial decisions and paper book and prayed for allowing the appeal.

8. Contra, the Ld. DR submitted that the CIT(A) has rightly confirmed the penalty though

technicalities raised by the assessee in additional ground of appeal are devoid of merits and prayed for dismissal of the assessee appeal.

9. We heard the rival contentions and perused the material on record. The sole crux of the disputed issue is that the assessee has challenged the levy of penalty on 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 inaccurate particulars of income. The Ld.AR demonstrated the copy of penalty notice and the submissions are realistic. We find the Jurisdictional Honble High Court of Bombay. in. Mohd. Farhan. A. Shaikh Vs. DCIT.inTax.AppealNo.51to57of2012dated11.03.2021. (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.

10. 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 A.O has not has not strike off the charge for levy of penalty for concealment of income or for furnishing of inaccurate particulars of income. Accordingly, we set aside the

order of the CIT(A) and quash the penalty notice. And allow the grounds of appeal in favour of the assessee.

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11. As the facts and circumstances in these appeals are identical to ITA No. 2445/Mum/2021 (except variance in figures), the decision rendered in above paragraphs would apply mutatis mutandis for all these cases also. Accordingly, grounds of appeal of the Assessee are allowed.

12. In the result, all the four appeals filed by the assessee are allowed.

Order pronounced in the open court on 07.07.2022

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 07.07.2022

PK, Sps

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

9.

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सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai