

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

ITA NO. 1135/MUM/2022 : A.Y : 2012-13

Hiren Bechar Patel
Plot No. 111, Akshardam,
Floor 5/6, Kansai Section,
Ambernath East, Ambernath 421 501,
Maharashtra. (Appellant)
PAN : AOLPP7438Q

Vs. Income Tax Officer,
Ward-2(5), Kalyan
(Respondent)

Appellant by : None
Respondent by : Mahita Nair

Date of Hearing : 29/06/2022
Date of Pronouncement : 29/06/2022

ORDER

PER AMIT SHUKLA, JM :

The aforesaid appeal has been filed by the assessee against the impugned order dated 28.04.2022 passed by learned Commissioner of Income Tax (Appeals)-11, Pune (in short 'ld. CIT(A)') in relation to penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act') for the Assessment Year 2012-13. In its appeal, assessee has raised the following grounds :-

"1. In law, on facts and in the circumstances of the case, the impugned penalty order passed u/s. 271(1)(c) by the Income Tax Officer, Ward 2(5), Kalyan, is bad in law in view of non-specific charge in the SCN issued along

with the assessment order as well as in the penalty order. Therefore, the impugned penalty order is required to be quashed.

2. On the facts and in the circumstances of the case, the CIT(A)-11, Pune has grossly erred in confirming the penalty to the extent of Rs.9,60,430/- u/s 271(1)(c) of the Act where the appellant has submitted all the cogent evidences in support of his claim during the original assessment and also subsequently in the proceedings u/s 263 of the Act. The A.O. may please be directed to delete the penalty levied.”

2. The facts in brief are that the assessee derives its income from resale of consumer products and food grains, salary income from Patel Retail Pvt. Ltd. The penalty in question has been confirmed by the Id. CIT(A) on account of unexplained cash received from Smt. Sanjeevani Suresh Salunkhe on the ground that assessee could not prove the creditworthiness of the creditor. In so far as the other additions confirmed by the CIT(A), the same have been deleted by the Tribunal in the quantum proceedings, however, this issue was not challenged by the assessee before the Tribunal.

3. From a perusal of the assessment order we find that, nowhere the Assessing Officer has specified the charge as to under which limb of Section 271(1)(c) of the Act he is initiating the penalty whether for furnishing of ‘inaccurate particulars of income’ or for ‘concealment of income’. In para 5 of the impugned order, he has simply said that penalty proceedings are separately initiated. Even though in the assessment order he has mentioned about ‘furnishing of inaccurate particulars of income’. However, as pointed out in the grounds of appeal, in the show cause notice issued by the Assessing Officer under Section 274/271(1)(c) of the Act, no charge has been specified while initiating the penalty proceedings. Now, it is well settled law by the judgment of the full bench of Hon'ble jurisdictional High Court in the

case of *Mohd. Farhan A. Shaikh vs. DCIT (2021) 125 taxmann.com 253 (Bom.)* wherein the Hon'ble Court has held that even though assessment order clearly records satisfaction for imposing penalty on one or other, or both grounds mentioned in section 271(1)(c), then also a mere defect in notice not striking off irrelevant matter would vitiate penalty proceedings.

4. Accordingly, the penalty levied by the Assessing Officer is deleted on the ground that no charge has been specified in the show cause notice issued by the Assessing Officer under Section 274/271(1)(c) of the Act as to under which limb he has initiated the penalty proceedings. On this count, the penalty of Rs.9,60,430/- is deleted.

5. In the result, appeal of the assessee is allowed.

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

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date : 29.06.2022

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Asstt. Registrar/Sr. Private Secretary
I.T.A.T, Mumbai