

आयकरअपीलीयअधिकरण“बी”न्यायपीठपुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL “B”
BENCH, PUNE

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

आयकरअपीलसं. / ITA No.1265/PUN/2018
निर्धारणवर्ष / Assessment Year : 2006-07

Purushottam Yashwant Gadgil, C/o.M/s.P N Gadgil, Sarafa Bazar, Sangli - 416416. PAN: ABDPG 6297 K	Vs	The ITO, Ward-1(2), Sangli.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Nikhil Pathak – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	04/07/2022
Date of pronouncement	13/07/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax(Appeals)-1, Kolhapur for the A.Y. 2006-07 dated 16.05.2018.

2. In this case, penalty under section 271(1)(c) of the Act has been levied by the Assessing Officer, Ward-1(2), Sangli vide order dated 21.12.2011. In the assessment order passed under section 143(3) of the Act dated 31.12.2007 there has been addition on account of [undisclosed investment in Gold Trading Business – GP on Gold Trading Business – unexplained cash]. The Assessee filed an appeal against the addition before the Commissioner of Income tax (Appeal). The CIT(A) gave part relief. Both the assessee and the

department filed appeal before the Hon'ble ITAT Pune Bench against the order of CIT(A). The Hon'ble ITAT vide order dated 6/4/2011 confirmed the order of Ld.CIT(A). The Assessing officer levied penalty u/s 271(1)(c) of the Act. Aggrieved by the Penalty Order the Appellant assessee filed appeal before this tribunal.

3. The Id.Authorised Representative(ld.AR) for the assessee raised an additional ground that penalty notice is invalid as the Assessing Officer(AO) has not recorded satisfaction in the assessment order, the AO has not struck down the relevant portion of the notice under section 271(1)(c) of the Act. The ld.AR submitted copy of the notice dated 31.12.2007 issued under section 274 r.w.s 271(1)(c) of the Act.

4. The Id.Departmental Representative(ld.DR) for the Revenue submitted that the AO has struck the word "or" in the notice. It means, the AO is of the opinion that there is concealment as well as inaccurate particulars of income. Therefore, the sentence becomes "have concealed particulars of your income furnished inaccurate particulars of such income". The ld.DR further submitted that it shows that the AO wanted to levy penalty on both the limbs.

5. Heard both the parties. Perused the records. On perusal of the notice under section 271(1)(c) of the Act dated 31.12.2007 it is

observed that the word “or” has been struck by the AO, therefore, we agree with the submission of the Id.DR that the AO wanted to levy penalty for both concealment of income and filing inaccurate particulars of income. However, on perusal of the assessment order, it is observed that the AO nowhere mentioned whether penalty proceedings are initiated for concealment of income or filing inaccurate particulars of income or for both. In the penalty order, the AO has levied penalty only for concealment of income. Thus, though the Departmental Representative claimed that the AO wanted to levy penalty on both aspects i.e. concealment as well as inaccurate particulars, but in the penalty order the penalty is levied only on concealment of income. This explains the AO was not clear on the issue of levying penalty. The AO was not clear on the issue whether the penalty is to be levied for concealment of income or for filing inaccurate particulars of income. It has already been mentioned that there is no satisfaction recorded in the assessment order. The Hon’ble Bombay High Court has held in the case of Pr. Commissioner of Income Tax, (Central), Bengaluru v. Golden Peace Hotels & Resorts (P.) Ltd. Tax Appeal No. 13 of 2019 vide order dated February 3, 2020 as under:

Quote, “5. We have carefully examined the record as well as duly considered the rival contentions. Both the Commissioner (Appeals) as well as the ITAT have categorically held that in the present case, there is no record of satisfaction by the Assessing Officer that there was any concealment of income or that any inaccurate particulars

were furnished by the assessee. This being a sine qua non for initiation of penalty proceedings, in the absence of such satisfaction, the two authorities have quite correctly ordered the dropping of penalty proceedings against the assessee.” Unquote.

5.1 The Hon’ble Bombay High Court in Ganga Iron & Steel Trading Co. v/s Commissioner of Income Tax[2022] 135 taxmann.com 244 (Bombay)order datedDecember 22, 2021 held as under:

“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.”

6. Respectfully following the proposition of law laid down by the Hon'ble Bombay High Court(supra), we are of the opinion that there is no satisfaction recorded by the AO on the aspect whether there is concealment of income or inaccurate particulars have been filed. The AO has initiated Penalty on account of Concealment of Income and filling inaccurate particulars but levied penalty only on concealment of income. Thus, there is no application of mind by the AO, therefore, the impugned Penalty under section 271(1)(c) of the Act is not maintainable, accordingly, ground raised by the assessee is allowed.

7. In the result, appeal of the Assessee is Allowed.

Order pronounced in the open Court on 13th July, 2022.

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

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

पुणे / Pune; दिनांक / Dated : 13th July, 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, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.