

**IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE**

**SHRI PARTHA SARATHI CHAUDHURY, JM AND  
G.D. PADMAHSHALI, AM**

**ITA No. 822/PUN/2018 : Assessment Year : 2004-05**

Arvind J. Pandey  
158A Gupta Bhawan  
Kharalwadi,  
Pune-411 018  
PAN: AARPP 2115 Q

:Appellant

Vs.

The Dy. C.I.T., Circle 8, Pune

: Respondent

Appellant by : Shri S.N. Puranik

Respondent by : Shri M.G. Jasnani

Date of Hearing : 12-08-2022

Date of Pronouncement : 18-08-2022

**ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the assessee emanates from the order of the Id. CIT(A)-6 Pune dated 13-03-2018 for A.Y. 2004-05 as per the grounds of appeal on record.

2. The solitary grievance of the assessee is the imposition of penalty u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") by the A.O and as confirmed by the Id. CIT(A). It is the case of the assessee that the A.O while imposing penalty was in a mind of ambiguity and has not arrived at a proper satisfaction since both in the penalty order as well as in the notice u/s 274 r.w.s. 271(1)(c) of the Act, the A.O has not struck out the inappropriate limb and has retained both the limbs of the provisions while imposing the said penalty. It was further contended that this is the case for A.Y. 2004-05. That even in assessee's own case for A.Y. 2005-06 to 2010-11 in ITA No. 880 to 885/PUN/2017, order dated 01-08-2019 the Tribunal has provided relief to the assessee. The relevant judgment is also placed on record.

3. We have perused the assessment order where initiation of penalty has been for both the furnishing inaccurate particulars of income as well as for concealment of income. That further in the penalty order at para 19 again, the A.O observed as follows:

*"I therefore, have a reason to believe that the assessee has deliberately and intentionally concealed the income and furnished the inaccurate particulars of income."*

4. Therefore, conclusively, the A.O in the entire process of initiation of levy of penalty u/s 271(1)(c) of the Act, was ambiguous and did not have any clarity of mind so as to under which limb of the provision, he intend to impose penalty on the assessee. There is no evidence on record to suggest that the A.O has arrived at any satisfaction. Rather, as per the penalty order and the notice u/s 274 r.w.s. 271(1)(c) of the Act, it is clear that there was ambiguity in the mind of A.O so that he has not struck off the inappropriate limb of the provision and has retained both the limbs i.e. concealment of income and furnishing of inaccurate particulars of income while imposing penalty. This exercise is not at all warranted in the realm of income-tax proceedings. The jurisdictional High court in the case of CIT Vs. Shri Samson Perinchery (2017) 392 ITR 4 (Bom) has held that the A.O is under obligation to satisfy the appropriate limb of section 271(1)(c) at the time of initiation of levy of penalty. We have also observed that on the same reasons for A.Y. 2005-06 to 2010-11 in respect of the assessee, penalty proceedings were quashed. We have also observed that the notice u/s 274 r.w.s. 271(1)(c) of the Act is ambiguous and that the A.O has not arrived at satisfaction as to which limb of the provision he is levying the penalty. The A.O has not struck off the inappropriate limb of the provision which is evidently noticed as follows:

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Arvind J. Pandey  
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**NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(c) OF  
THE INCOME-TAX ACT, 1961**

No. Pn/ITO(C-II/A.P./2011-12

Office of the  
Income-tax Officer, Central Circle –II, Pune.  
PMT Commercial Complex,  
Shanka Sheth road,  
Swargate, Pune-411 037  
Date: 30-12-2011

PAN: AARPP 2115Q

To

Arvind Janardan Pandey  
C-22 Diamond Pak, Park Street  
Kalewadi Phata, Wakad,  
Pune.

*Whereas in the course of proceedings vbefore me for the A.Y. 2004-05, it appears to me that you :*

*Have concealed the particulars of your income and furnished inaccurate particulars of such income.*

*You are hereby requested to appear before me at 2.30 p.m. on 12-01-2012 at above address and show cause why an order imposing a penalty on you should not be made u/s 271 of the Income-tax Act, 1961. If you donot wish to avail yourself of this opporutunity ofbeing heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made u/s 271(1)(c).*

Sd/-

(SEAL) of  
I.T.O. Central)-II  
Pune

(D.M.MISALKAR)  
Income-tax Offc0444ier  
(Central)-II, Pune. “

5. 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 dated December 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. In view of the above deliberation on this issue without going into merits of the case of the assessee, on this legal ground itself, we set aside the order of the Id. CIT(A) and direct the A.O to delete the penalty from the hands of the assessee. The ground of appeal of the assessee is allowed.

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

Order pronounced in the open Court on this 18<sup>th</sup> August 2022.

**Sd/-**  
**(G.D. PADMAHALI)**  
**ACCOUNTANT MEMBER**

**sd/-**  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Pune; Dated, this 18<sup>th</sup> day of August 2022  
Ankam

**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The Pr. CIT - 5, Pune.
4. The CIT(A)-6, Pune
5. The D.R. ITAT 'B' Bench Pune.
6. Guard File

BY ORDER,

Sr. Private Secretary  
ITAT, Pune

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 A.Y. 2004-05

		Date	
1	Draft dictated on	08-08-2022	Sr.PS
2	Draft placed before author	10-08-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	18-08-2022	Sr.PS/PS
7	Date of uploading of order	18-08-2022	Sr.PS/PS
8	File sent to Bench Clerk	<i>18-08-2022</i>	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		