

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

**BEFORE SHRI S.S.GODARA, JM
AND SHRI DR. DIPAK P. RIPOTE, AM**

आयकर अपील सं. / **ITA No.168/PUN/2020**
निर्धारण वर्ष / **Assessment Year : 2013-14**

ITO, Ward -1(1), Nashik

.....अपीलार्थी /Appellant

बनाम / V/s.

Ganesh Sahakari Bank Ltd.,
Sancheti Towers,
Opp. Circle Cinema,
Ashok Stambh,
Nashik – 422 001

PAN : AAAAG1860 H

.....प्रत्यर्थी /Respondent

Assessee by : Shri Parmod S. Shingte
Revenue by : Shri Arvind Desai

सुनवाई की तारीख / Date of Hearing : 15.06.2022
घोषणा की तारीख / Date of Pronouncement : 28.07.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. This Revenue’s appeal for A.Y. 2013-14 is directed against the CIT(A) - 1, Nashik’s order dated 26/11/2019 passed in case No. PN/CIT(A)-1/194/2016-17 involving proceeding u/s. 271(1)(c) of the Income Tax Act, 1961 ; in short “the Act”.

Heard both the parties. Case file perused.

2. Coming to the Revenue's sole substantive grievance that the CIT(A) has erred in law and on facts in reversing the Assessing Officers action imposing section 271(1)(c) penalty of Rs. 58,67,910/-, we note at the outset that lower appellate discussion holding the latter's show cause notice to this effect dated 22.03.2016 as bad in law, reads as under.

“5.1 Legal Issue (under which limb penalty was imposed) :-

On perusal of the assessment order, the AO has initiated penalty proceedings u/s. 271(l)(c) for furnishing inaccurate particulars of income and concealment of income. Notice u/s. 271(l)(c) has been initiated in both the limbs i.e. have concealed the particulars of your income or furnished inaccurate particulars of such income, without specifying the appropriate limb and in the penalty order, the AO has imposed for furnishing of inaccurate particulars of income thereby concealed income within the meaning of section 271(l)(c) read with explanation 1.

5.2 In this regard, the AR of the appellant has relied upon on the decisions of the Mumbai High Court in the case of Samson Perinchery [ITA No. 1154 of 2014(Bombay)] and the relevant portion of the said judgement is discussed as below:

In the case of Samson Perinchery (ITA No.1154 of 2014 (Bombay)) it was held that, “Section 271(1)(c) : Failure by the AO to specify in the section 274 notice whether the penalty is being initiated for ‘furnishing of inaccurate particulars of income’ or for ‘concealment of income’ is fatal. It reflects non-application of mind and renders the levy of penalty invalid (Manjunatha Cotton 359 ITR 565 (Kar) followed). The above submission on the part of the Revenue is in the face of the decision of the Supreme Court in Ashok Pai Vs. CIT 292 ITR 11 [relied upon in Manjunath Cotton & Ginning Factory (Supra)]-wherein it is observed that concealment of

income in section 271(1)(c) of the Act, carry different meanings/connotations.

Therefore, the satisfaction of the Assessing officer with regard to only one of the two breaches mentioned under section 271(l)(c) of the Act, for initiation of penalty proceedings will not warrant/ permit penalty being imposed for the other breach. This is more so, as an Assessee would respond to the ground on which the penalty has been initiated/ notice issued. It must, therefore, follow that the order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated, and it cannot be on a fresh ground of which the Assessee has no notice"

5.3 The Hon'ble ITAT Pune, in the case of Acquatech Systems (Asia) Pvt. Ltd .Vs. DCIT Cir.1(l), Pune in ITA No.416/PUN/2015, order dated 18.06.218 has decided the identical issue in favour of the appellant. In this case, the AO has initiated penalty proceedings in the assessment order by recording satisfaction that, the appellant has furnished inaccurate particulars of income and concealment of income, whereas, in the penalty order, the AO has levied penalty for furnishing inaccurate particulars of income. The facts noted by Hon'ble in para 3 of the order are as under:

"In the assessment order, the Assessing Officer has recorded satisfaction for levy of penalty u/s. 271(1)(c) in respect of both the addition separately. The Assessing Officer while recording satisfaction has mentioned both the limbs of section 271(1)(c) i.e. concealment of income or furnishing inaccurate particulars of income. However, the penalty has been levied for furnishing inaccurate particulars of income. The manner in which satisfaction has been recorded by the Assessing Officer for initiating penalty

proceedings u/s. 271(1)(c) clearly reflects ambiguity in the mind of Assessing Officer with respect to charge for levy of penalty. This ambiguity is further perpetuated at the time of issuance of notice u/s. 274 of the Act. In the notice, the Assessing Officer has again mentioned both the limbs of section 271(l)(c) with conjunction or."

5.4 Recently, the Hon'ble ITAT Pune, in the case of *M/s. Babubhai Cloth Store vs. Addl.CIT, Range-1, Nashik* reported in ITA NO.1727/PUN/2016 A.Y.2007-08 order dated 30.01.2019, has held that " It is a settled legal proposition that the AO is under obligation to specify the correct limb at the time of initiation as well as at the time of levy of penalty. This view of ours is fortified by the judgment in the case *CIT vs. Shri. Samson Perinchery (2017) 392 ITR 4(Bom)* as well as *CIT vs. Manjunatha Cotton & Ginning Factory 359 ITR 565*. In view of the above deliberation on this issue, without going into the merits' of the penalty, we are of the opinion that the penalty order is liable to be quashed on this legal issue.

5.5 In the case of *Mohan Pralhad Patil V/s. Dy. CIT Circle-2, Jalgaon* bearing ITA No.202/Pun/2015 dated 9/3/2017 while deleting penalty, had relied upon Para No.5 and 6 of *Goldie Jogendersingh Anand* in ITA NO.188/PUN/2016 (order dated 22/02/2013) held as follows :-

*"We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. The assessee has assailed levy of penalty u/s. 271(1)(c) of the Act on account of defective notice. **The Id. AR of the assessee has pointed that the notice issued u/s. 274 r.w.s. 271(l)(c) is defective as irrelevant parts of the proforma notice have not been struck off.** The Hon'ble Karnataka High Court in the case of *Commissioner of Income Tax Vs. Manjunatha Cotton and Ginning Factory* reported as 359 ITR 565 has held that, "when the Assessing Officer proposes to invoke the first limb*

*being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind". In the present case we find that at the time of initiating penalty proceedings the Assessing Officer while recording satisfaction has observed that, "the assessee has concealed the income and has also furnished inaccurate particulars of income within the meaning of section 271(1)(c) of the Act." **While issuing notice the Assessing Officer has not struck off irrelevant part in the show cause notice issued u/s. 274 and thus, the relevant extract of notice indicating charge for levy of penalty reads as under: "have concealed the particulars of your income or furnished inaccurate particulars of such income."***

*In view of the above stated facts and legal decisions cited above, the penalty order passed u/s. 271(l)(c) is bad in law, therefore, the appeal of the appellant on ground is **allowed**. Penalty imposed u/s. 271(l)(c) of the Act of ₹ 58,67,910/- is cancelled."*

3. Learned DR could hardly dispute that the impugned show cause notice had nowhere specified as to whether the assessee had concealed particulars of its income or furnished inaccurate particulars of such income as it is evident in page no.1 of the latter's paper book running into 18 pages. That being the case, we quote hon'ble jurisdictional high court's recent Full Bench decision (2021)125 taxmann.com 253(Bom.) Mohammed Farhan A Shaikh Vs/ DCIT concluding that such a failure on the Assessing Officer's part is very much fatal to validity of the impugned proceedings. We accordingly

uphold the CIT(A)'s impugned action deleting the penalty in issue for this precise reason alone.

All other pleadings on merits are rendered academic.

4. This Revenue's appeal is dismissed in above terms.

Order pronounced in the Open Court on this 28th day of July, 2022.

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

Sd/-
(S.S. GODARA)
न्यायिक सदस्य/**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 28th July, 2022.
Ashwini

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Nashik.
4. The Pr.CIT-1, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File. आदेशानुसार / BY ORDER,
// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

S.No.	Details	Date	Initials
1	Draft dictated on	15.06.2022	
2	Draft placed before author	28.07.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
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		