

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL "A"
BENCH, PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY,
JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.1259/PUN/2018
निर्धारणवर्ष / Assessment Year : 2010-11

Deelip Vijaykumar Kotecha, 1, Pradhan Apartment, Pratap Nagar, Jalgaon – 425001. PAN: ABCPK 8441 J	Vs	The ACIT, CC-(1), Nashik.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Hari Krishan & Jaygobind Palai –AR
Revenue by	Shri S.P. Walilmbe – DR
Date of hearing	29/07/2022
Date of pronouncement	08/08/2022

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)-12, Pune for the A.Y. 2010-11 dated 27.04.2018, emanating out of order under section 271(1)(c) of the Income Tax Act, 1961 dated 19.09.2014. The assessee has raised the following grounds of appeal:

“ *[A] Grounds of Appeal*
1. In the facts and circumstances of the case and in law, the learned Assessing Officer erred in passing the assessment order without having jurisdiction because, no opportunity of being heard was granted to the Appellant u/s 127 and also disregarding the objections raised u/s 292BB in this regard.

Without prejudice to the above and alternatively.

2. *In the facts and circumstances of the case and in law, the Assessing Officer erred in levying penalty u/s 271(l)(c) on the basis of notice u/s 274 r.w.s 271(l)(c) wherein no specific mentioned of either filing of inaccurate particulars or concealment of income was mentioned and thereby passing the order of penalty which is to be quashed as per recent judgement of **Bombay High Court and Supreme Court***

3. *In the facts and circumstances of the case and in law, the Assessing Officer erred in levying penalty u/s 271(l)(c) amounting to Rs.5,69,552/-*

4. *In the facts and circumstances of the case and in law, the Commissioner of Income Tax(A) erred in confirming the above grounds without appreciating several case laws cited and without rebutting written submissions in detail.*

[B] Relief Prayed:

The appellant therefore prays follows,

4. *To quash the penalty order passed without proper jurisdiction u/s 127 of the Act.*

5. *To quash the penalty order passed which is contrary to the judgement of Bombay High Court and Supreme Court.*

6. *To delete the penalty u/s 274 rws 271(l)(c) amounting to Rs.5,69,552/-.*

[C] General: -

- *The appellant reserves rights to add alter or delete any portion of this appeal before its conclusion.*
- *A Detailed paper book along with case laws will be submitted at the time of hearing.*
- *This appeal has been filed on time and may please be allowed in full.”*

2. Brief facts of the case are that in this case the assessment order under section 144 r.w.s 153A of the Act was passed on 30.03.2014. The AO made additions under section 68 & 69A of the Act. The Assessing Officer(AO) also levied penalty under section 271(1)(c) of the Act.

3. Aggrieved by the penalty order of the AO, the assessee filed appeal before the Id.CIT(A). The Id.CIT(A) confirmed the penalty under section 271(1)(c) of the Act.

4. Aggrieved by the order of the Id.CIT(A), the assessee filed appeal before this Tribunal.

5. The Id.Authorised Representative(Id.AR) for the assessee at the outset explained that the penalty notice dated 30.03.2014 is bad in law as the AO has not struck-off the appropriate words from words *“concealed the particulars of your Income or furnished inaccurate particulars of such Income”*. The Id.DR relied on the order of the Lower Authorities, however, the Id.DR candidly accepted that in the penalty order the appropriate words have not been struck-off.

6. Heard both the parties, perused the records. The only issue is levy of Penalty of Rs.5,69,552/- u/s 271(1)(c) of the Act. On perusal of the notice u/s.274 r.w.s 271(1)(c) dated 30.03.2014 issued by the Assessing Officer(AO), it is observed that the AO has not struck the

appropriate words i.e. *have concealed the particulars of Income or furnished Inaccurate particulars of such income.* In the assessment order there is no mention whether the penalty has been initiated for filling inaccurate particulars of Income or for concealment of Income.

6.1 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 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.”

6.2 In the case under consideration also the AO has not struck the appropriate words in the penalty notice. Also as mentioned in earlier para, in the assessment order the Assessing Officer has not mentioned whether the penalty is initiated for concealment or filling inaccurate particulars. Therefore, respectfully following the Hon'ble jurisdictional High Court, it is held that the penalty u/s.271(1)(c) is not maintainable. Hence, the Assessing Officer is directed to delete the penalty u/s.271(1)(c) of the Act, accordingly, Ground No.2 raised by the assessee is allowed. Since, we have allowed Ground No.2 of the assessee, other grounds become academic in nature, hence we have not adjudicated them.

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

Order pronounced in the open Court on 8th August, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

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

पुणे / Pune; दिनांक / Dated : 8th Aug, 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, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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