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 Nos.1255 & 1256/PUN/2018
निर्धारणवर्ष / Assessment Years : 2006-07 & 2007-08

Shri Ashok V.Kotecha, 4, Teachers Colony, Ring Road, Jalgaon – 425001. PAN: ABMPK 4173 D	Vs	The DCIT, Central Circle-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:

These two appeals filed by the Assessee are directed against the common order of ld.Commissioner of Income Tax(Appeals)-12, Pune dated 27.04.2018 for the A.Y.s 2006-07 & 2007-08, emanating from the order under section 271(1)(c) of the Income Tax Act, 1961 dated 29.03.2017. Since the facts and issue involved in both these appeals are same, therefore, two appeals are clubbed, heard and are decided together by a consolidated order. For the sake of convenience, we take the Appeal in **ITA No.1255/PUN/2018 for A.Y.2006-07** as lead case. The Assessee has raised the following 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 3,54,720/- thereby rejecting the request of the Appellant to keep the penalty proceedings in abeyance as the appeal is under hearing before the ITAT.*

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,

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

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

3. *To delete the penalty u/s 274 r w s 271(l)(c) amounting to Rs. 3,54,720/-*

[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. The ld.Authorised Representative(ld.AR) of the assessee at the beginning pointed out that notice under section 271(1)(c) of the Act dated 29.03.2017 is defective as the Assessing Officer(AO) has not struck-off the relevant part of the notice. This shows, non-application of mind. The ld.AR also invited our attention to the assessment order, where Assessing Officer vaguely mentioned penalty initiated separately for concealment of the particulars of income or furnished inaccurate particulars of income. Therefore, ld.AR submitted that even in the assessment order, the AO was not clear whether there is concealment of income or furnished inaccurate particulars.

3. The ld.Departmental Representative(ld.DR) for the Revenue relied on the orders of the Lower Authorities.

4. We have heard both the parties, studied the records. The only issue involved is penalty order under section 271(1)(c) of the Act dated 29.03.2017 passed by the DCIT, Central Circle-1, Nashik. It is observed that none of the non-applicable words have been struck-off by the AO in the notice under section 271 dated 29.03.2014. the notice under section 274 r.w.s 271(1)(c) contained "have concealed the particulars of income or furnished inaccurate particulars of such income". The AO has not struck-off the appropriate words "concealed particulars of income" "filed in accurate particulars". We

are of the opinion that the penalty notice is defective. We find support from the order of 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."

4.1. In the case under consideration also the AO has not struck the appropriate words in the penalty notice. 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).

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

ITA No.1256/PUN/2018 for A.Y. 2007-08:

6. As we have noted above that the assessee has raised identical ground of appeal and the facts of this appeal under consideration are almost identical to the facts for the A.Y. 2006-07. Therefore, our decision in **ITA No.1255/PUN/2018** will apply *mutatis-mutandis* to the appeal number in **ITA No.1256/PUN/2018**. Accordingly, this appeal is allowed.

7. In the result, both the appeals of the assessee are allowed.

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

Sd/-	Sd/-
(PARTHA SARATHI CHAUDHURY)	**(DR. DIPAK P. RIPOTE)**
JUDICIAL MEMBER	**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.