



आयकर अपीलीय न्यायाधिकरण, पुणे न्यायपीठ, "बी" बेंच पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE "B" BENCH, PUNE
BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 991/PUN/2019

करनिर्धारण वर्ष / Assessment Year : 2012-13

Uttam Balasaheb Godbharale,
Shree Tyres MRF, Samrat Chowk,
Nanded Road, Latur - 413512
PAN :AEVPG3770N

..... अपीलार्थी / **Appellant**

बनाम / V/s.

The Income Tax Officer,
Ward - 1, Latur.

..... प्रत्यर्थी / **Respondent**

द्वारा / Appearances

Assessee by : Shri M. K. Kulkarni

Revenue by : Shri M. G. Jasnani

सुनवाई की तारीख / Date of conclusive Hearing :16/08/2022

घोषणा की तारीख / Date of Pronouncement :16/08/2022

आदेश / ORDER

PER G.D. PADMAHSHALI, AM;

The appellant assessee preferred the present appeal against the order of Commissioner of Income Tax (Appeals)-2, Aurangabad [forshort "**CIT(A)**"] dt.07/05/2019 passed u/s 250 of the Income-tax Act,1961 [for short "**the Act**"] which in turn originated from the order of penalty [for short "**PO**"] dt 29/06/2017 passed by the Income Tax Officer [for short "**AO**"] u/s 271(1)(c) of the Act for the assessment year [for short "**AY**"] 2012-13.



2. Before riding the cycle for adjudication, it is essential to reproduce **grounds challenged** by the appellant as;

“1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) was not justified in upholding the penalty levied under S. 271(1)(c) of the Act since the assessment order passed by the A.O. under S. 144 r.w.s. 148 is ab-initio void and illegal. In view of this penalty levied of Rs.4,25,400/- is also illegal and without jurisdiction. It be quashed and set aside.

2. On the facts and in the circumstances of the case and in law and on perusal of the penalty order u/s 271(1)(c) it reveals that the proceedings to levy penalty was initiated for “concealment of income” but the same has been levied for ‘concealment’ of income/furnishing of inaccurate particulars of income’. The penalty has been levied on both the limbs of S. 271(1)(c). The penalty levied is illegal and without jurisdiction. It be quashed.”

3. The appellant craves to leave, add/amendor alter any of the above grounds of appeal.”

3. The solitary dispute under present appeal seeks the adjudication on the validity of foundation for initiation of



penalty vis-à-vis imposition thereof without application of mind alleging the non-speaking notice served u/s 271(1) r.w.s. 274 of the Act.

4. Briefly stated, the facts of the case as born out of the records are;

4.1 The appellant assessee is an individual, had filed his return of income [for short "**ROI/ITR**"] for AY 2012-13 on 10/11/2016 declaring total taxable income of ₹1,69,880/-, wherein the case was selected for scrutiny by issue of notice u/s 143(2) and the assessments was culminated at ₹18,69,880/- by an order u/s 144 r.w.s. 147 of the Act. Out of the total addition, an addition of ₹17,00,000/- u/s 68 explained cash deposit into Saving bank account, consequently penalty proceedings u/s 271(1)(c) were initiated for furnishing inaccurate particulars of income and levied accordingly.

4.2 Ld. AO observing that, the aforesaid quantum order was remained unchallenged by the assessee before the first appellate authority and in the absence of



any record suggesting further appeal thereagainst, has concocted the acceptance of quantum by the assessee and by issue show cause notice [for short "**SCN**"] dt 23/12/2016 274 r.w.s. 271(1)(c) of the Act and initiated the penalty proceedings, not finding force in assessee's submission, which resulted into imposition of penalty with sum of ₹4,25,400/- equal to 100% of tax sought to be evaded on the impugned addition carried out u/s 68.

4.3 Ld. CIT(A) on the other hand, not finding any force with reiterated written submission tendered by the Ld. AR, coincided with the views of Ld. AO in confirming the penalty imposed. Aggrieved thereby, the appellant assessee is before us with the grounds challenged herein at para 2 above.

5. Without touching to the merits of the case, during the course of physical court hearing, Ld. AR support of legal ground raised taken us through the relevant facts of the case vis-à-vis paper book filed on record and in, it is submitted that, the **initiation as well imposition of**



penalty suffers from voice of non-application of mind of the Ld. AO and therefore penalty deserves to be deleted. ***Au contraire***, the Ld. DR supported the orders of the lower tax authority and the conviction of Ld. CIT(A).

6. We have heard the rival contentions of both the parties; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short **“ITAT, Rules”**] perused the material placed on records and duly considered the facts of the case in the light of settled legal position and the case laws relied upon by the appellant assessee as well the respondent revenue.

7. It is apt to quote relevant text of the provision to arrive at the applicability in the instant case before us;

271. Failure to furnish returns, comply with notices, concealment of income, etc.

(1) If the [Assessing] Officer or the [Commissioner (Appeals)] [or the Commissioner] in the course of any proceedings under this Act, is satisfied that any person-

(a)

(b)



(c) has concealed the particulars of his income or [* *
*] furnished inaccurate particulars of [such income, or

(d)

he may direct that such person shall pay by way of
penalty,—

(i)

(ii)

(iii) in the cases referred to in clause (c) [or clause
(d)], [in addition to tax, if any, payable] by him, a sum
which shall not be less than, but which shall not
exceed [three times], the amount of tax sought to be
evaded by reason of the concealment of particulars of
his income or the furnishing of inaccurate particulars
of such income (Emphasis supplied)

7.1 One can observe, that the provisions of section 271(1)(c) of the Act **lex lata**, postulates that, penalty prescribed therein can only be levied on the occurrence of either of the situation, namely either for **concealment of particulars of income** or **for furnishing of inaccurate particulars of such income**. It has been judicially well settled by now that, the “**concealment of particulars of income**” and “**furnishing of inaccurate**



particulars of income” referred into section 271(1)(c) of the Act signifies two distinct connotations, and the said proposition can be witnessed from the judgments of the Hon'ble Supreme Court in the case of **“Dilip N Shroff Vs JCIT”** reported at 291 ITR 519 (SC), and **“Ashok Paid Vs CIT”** reported at 292 ITR 11. In the light of aforesaid judicial precedents, it is imperative on the part of Ld. AO to make the assessee aware in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act as to **which one of the two limbs is alleged against** him for the purposes of imposition of penalty and unless it is made aware of any specific charge against him, the proceedings shall be violative of the principles of natural justice inasmuch as the assessee would not be in a position to put up his necessary defence appropriately.

7.2 One has to appreciate the point being canvassed by the assessee before us, which is based on the tone and drift of the notice issued u/s 274 r.w.s. 271(1)(c) of the Act dt 23/12/2016, a copy of which has been placed on record which de-facto without specifying allegation n



clear terms so has to enable the appellant to refute or put forth the defence.

7.3 The infirmity in the notice was sought to demonstrate a reflection of non-application of mind by the Ld. AO ***ex facie*** and in support thereof a reference can be made to the specific discussion laid by the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra);

“It is of some significance that in the standard proforma used by the Assessing Officer in issuing a notice despite the fact that the same postulates that inappropriate words and paragraphs were to be deleted, but the same had not been done. Thus, the Assessing Officer himself was not sure as to whether he had proceeded on the basis that the assessee had concealed his income, or he had furnished inaccurate particulars. Even before us, the learned Additional Solicitor General while placing the order of assessment laid emphasis that he had dealt with both the situations.” (Emphasis supplied)

7.4 Factually speaking, the aforesaid plea of assessee is borne out of record and having regard to the parity of



reasoning laid down by the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra), the notice in the instant case apparently endures from non-application of mind by Ld. AO and a similar proposition was also articulated by the Hon'ble Karnataka High Court in **“CIT Vs M/s SSA’s Emerald Meadows”** (ITA 380/2015), which the Ld. AR heavily relied upon in support of legal ground raised as **“fumus boni iuris.”**

7.5 The Ld. DR did not dispute the factual matrix, but sought to point out that, there was a due application of mind by Ld. AO in the assessment order, wherein after discussing the reasons for the addition, has initiated the penalty proceedings u/s 271(1)(c) which can be seen from the relevant text on page 3/4 of assessment order;

“Since, Assessee has furnished the inaccurate particulars of income, penalty proceedings u/s 271(1)(c) is initiated separately”
(Emphasis supplied)

7.6 In our considered opinion, the attempt of the Ld. DR to demonstrate application of mind by the Assessing



Officer is of no defence, inasmuch as the Hon'ble Supreme Court has approved the factum of **non-specifying relevant clause in the notice is reflective of non-application of mind** by the Assessing Officer. Further, it is also noticeable that such proposition has been considered by the jurisdictional Hon'ble Bombay High Court in plethora of cases inter-alia **"CIT Vs Samson Pericherry"** reported in 392 ITR 4(BHC), and **"Mohd. Farhan A. Shaikh Vs DCIT"** reported in 434 ITR 1 wherein it is categorically held that, ***"No notice could be issued under Section 274, read with Section 271(1)(c), of the IT Act without indicating which particular limb of Section 271(1)(c) was invoked for initiating the penalty proceedings."***

7.7 To demonstrate the voice of non-application of mind by the Ld. AO, we shall also refer to the one of the pivotal feature of the present litigation that, in the assessment order the Ld. AO at the epilogue of para 03 on page 3/4 records initiation for furnishing inaccurate particulars per contra levied the penalty for



“concealment of income/furnishing of inaccurate particulars” at para 5 of page 2/2 of PO, whereas the notice u/s 274 r.w.s. 271(1)(c) of the Act was issued without specifying the applicable limb of section 271(1)(c) of the Act which evidently brings out the reticence on the part of Assessing Officer, resultantly there is complete absentia of clear and crystallised charge being conveyed u/s 271(1)(c), which to be safeguarded by the appellant assessee. In this regard we also refer a similar judgment of the Hon'ble Karnataka High Court in the case of **“S Chandrashekar Vs ACIT”**, reported at 396 ITR 538 (Karn) wherein a notice u/s 274 r.w.s. 271(1)(c) of the Act was issued in printed form **without specifying the grounds of initiation of penalty proceedings, was held to be invalid and untenable in law.**

8. In omnibus, as noted by the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra), the quasi-criminal proceedings u/s 271(1)(c) of the Act ought to comply with the principles of natural justice, and in the present case, considering the observations of the Assessing Officer in



the assessment order alongside his action of issuing the notice without any limb or charge being made against the assessee qua section 271(1)(c) of the Act establishes unfirm stance and therefore the proceedings suffered from non-compliance with principles of **“audi alteram partem”**.

9. Therefore, in view of the aforesaid discussion, the issue herein stands concluded in favour of the assessee and nothing contrary has been shown to us in the present facts which would warrant our taking a view different from Hon'ble Jurisdictional High Court of Bombay in the case of “CIT Vs Samson Pericherry” and “Mohd. Farhan A. Shaikh Vs DCIT” (supra).

10. Since the provision of section 271(1)(c) is calamitous, albeit commercial, consequences, the provision is mandatory and brooks no trifling or dilution therewith, as a result we are of the considered view that, having regard to the fact that in the instant case the SCN dt 23/12/2016 issued u/s 274 r.w.s. 271(1)(c) of the Act without specifying



any limb or charge, is invalid and untenable in the eyes of law, consequently the penalty imposed u/s 271(1)(c) of the Act is bad in law and quashed accordingly.

11. Resultantly, the appeal of the appellant assessee is allowed in terms of aforesaid observation.

In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on this Tuesday 16th day of August, 2022.

- S/d -
S.S. GODARA
JUDICIAL MEMBER

- S/d -
G. D. PADMAHSHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 16th day of August, 2022.

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-2, Aurangabad (Mh-India)
4. The CIT(A)-2, Aurangabad (Mh-India)
5. विभागीय प्रतिनिधि, आयकर अपीलीय न्यायाधिकरण, पुणे "बी" बेंच, पुणे / DR, ITAT, Pune "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY RDER,
वरिष्ठनिजीसचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.