



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. 514/PUN/2018

करनिर्धारण वर्ष/ Assessment Year :2013-14

The Ghoti Merchant's Co-op. Bank Ltd.,

Bhagyavardhini, A/P. Ghoti, Tal.-Igatpuri, Nashik-422402

PAN : AAAAG0825A

..... अपीलार्थी / Appellant

बनाम / V/s.

Asst. Commissioner of Income Tax,

Circle - 1, Nashik

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by :Smt. Deepa Khare

Revenue by :ShriM. 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 present appeal of the assessee for the assessment year [for short "**AY**"] 2013-14 is assailed against the first appellate order of Commissioner of Income Tax (Appeals)-1, Nashik [for short "**CIT(A)**"] dt.03/07/2017 passed u/s 250 of the Income-tax Act, 1961 [for short "**the Act**"] which emanated out of penalty order [for short "**PO**"] of Deputy Commissioner of Income Tax [for short "**AO**"] u/s 271(1)(c) of the Act dt.30/08/2016.



2. In advancing the matter for adjudication, it is essential to reproduce **grounds challenged** by the appellant as under;

“1. On the facts and in the circumstances of the case and in law the Learned CIT(A) is not justified in confirming the penalty under section 271(1)(c) when the appellant has not concealed any income nor has furnished inaccurate particulars of income. The penalty may please be cancelled.

2. On the facts and in the circumstances of the case and in law the Learned CIT(A) is not justified in confirming the penalty under section 271(1)(c), when all the facts and material and documents necessary for completion of assessment were produced before the Learned CIT(A). The penalty may please be cancelled.

3. On the facts and in the circumstances of the case and in law the Learned CIT(A) is not justified in confirming the penalty under section 271(1)(c), without appreciating the fact that the directions of the Reserve Bank are binding on the appellant Bank. The penalty may please be cancelled.



4. *On the facts and in the circumstances of the case and in law the Learned CIT(A) is not justified in confirming the penalty when the appellant is entitled to deduction on account of bad & Doubtful debts, the levy of penalty is not justified. The penalty may please be cancelled.*

5. *On the facts and in the circumstances of the case and in law the Learned CIT(A) is not justified in confirming the penalty under section 271(1)(c), when the issue is debatable and there is difference of opinion as to Allowability or otherwise of the depreciation of Rs.1,00,000 on Investment. The penalty may please be cancelled.*

6. *On the facts and in the circumstances of the case and in law the Learned CIT(A) is not justified in confirming the penalty under section 271(1)(c), relying on the decisions cited are not principally applicable to the facts of the appellant's case and are distinguishable. The penalty may please be cancelled.*

7. *On the facts and in the circumstances of the case and in law the Learned CIT(A) is not justified in confirming the penalty when all the above issues are*



debatable and there is difference of opinion. The penalty may please be cancelled.

8. The appellant craves leave to add, alter amend or withdraw any of the grounds of appeal.”

3. The controversy under the present appeal lies in a narrow compass as to survival of an order of penalty passed u/s 271(1)(c) of the Act on the premise of erratic and undetermined allegation.

4. The facts of born out of the records pithily stated as;

4.1 The appellant assessee is a Co-operative Bank and for AY 2013-14 had filed its return of income [for short **“ROI/ITR”**] on 25/09/2013 declaring total taxable income of ₹86,36,380/-, wherein the case was selected for scrutiny by issue of notice u/s 143(2) and the assessments was culminated at ₹95,02,428/- by an order u/s 143(3) of the Act with total addition of ₹8,66,048/- was made on account of concealment and furnishing



inaccurate particulars of income and wherefore the penalty proceedings u/s 271(1)(c) were initiated.

4.2 Ld. AO observing that, the aforesaid quantum order was unsuccessfully challenged 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 addition by the assessee and by issue of show cause notice [for short **"SCN"**] dt 18/02/2016 u/s 274 r.w.s. 271(1)(c) of the Act initiated the penalty proceedings and consequential notice on account of change in the incumbent. Not finding force in assessee's written submission, the Ld. AO by an order imposed a penalty of at ₹2,67,610/- equal to 100% of tax sought to be evaded on the impugned three addition carried out u/s 143(3) of the Act.

4.3 Ld. CIT(A) considering appellant submission granted partial relief for and for the balance levy echoed the views of Ld. AO and accordingly confirmed the penalty imposed in part. Aggrieved thereby, the appellant



assessee brought up the matter before Tribunal with the grounds assailed at para 2 herein above.

5. During the course of physical hearing, at the outset, it is brought to the notice of the bench that, the present appeal was delayed by 194 days, Learned Counsel for the appellant [for short "**AR**"] averting to an affidavit filed on record following the principle of "**actori incumbit probatio**" submitted that, as against the order of first appellate authority the appeal before this Tribunal should have been filed by 07/09/2017, whereas it has been filed with a delay of 194 days on 21/03/2018. It is submitted that, the aforementioned delay was on account of heavy workload, inadequate staff, calibre of staff being of substandard nature, rapid progress of bank with insufficient infrastructure coupled with advance technology in digitalization and accordingly prayed for condonation averting that the delay was unintentional and resulted out of confusion. Finding the reasonability and sufficiency in the submission of the appellant substantiating & explaining each day delay and no-



objection from the learned departmental representative [for short **"DR"**] when confronted, the bench ***ad idem***, in the light of celebrated decision of Hon'ble Apex Court in **"Collector Land Acquisition Vs MST Katiji and Others"** reported at 167 ITR 5 (SC) and Hon'ble Karnataka High Court in **"CIT Vs ISRO Satellite Centre"** reported at 263 ITR 549 (Kar) and Hon'ble Bombay High Court in **"CIT Vs Velingkar Brothers"** reported at 289 ITR 382 (Bom), condoned the delay.

6. Without going into merits of the case, in support of legal ground Ld. AR took us through the relevant facts of the case vis-à-vis paper book filed on record and it is pleaded that, the **satisfaction vis-à-vis 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) reiterating the factual position as to imposition has been in tune with the initiation of penalty vide SCN dt.



18/022016, consequently penalty deserves to be sustained.

7. 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.

8. 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)**

8.1 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.

8.2 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.18/02/2016, a copy of which has been placed on record which de-facto reads as under;

“Whereas in the course of proceedings before me assessment year 2013-14 it appeals to me that;-

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** Have concealed the particulars of your Income or furnished inaccurate particular of such Income*

You are required to furnish your reply on or before 18.03.2016 at 10.45 A.M 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 do not wish to avail yourself of this opportunity of being heard in person or through authorized 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).” *(Emphasis Supplied)*

8.3 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)

8.4 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."***

8.5 The Ld. DR did not dispute the factual matrix, but sought to point out from records that, there was a due application of mind by Ld. AO in the assessment order, wherein after discussing the reasons for the disallowance, has initiated the penalty proceedings u/s 271(1)(c) which resultantly culminated into imposition for concealment of income so far it relates to capitalising the nominal membership without crediting to Profit & Loss account [for short **"P&L"**] and for furnishing inaccurate particulars so far it relates to disallowance in connection with bad debts and investment fluctuation reserves etc.

8.6 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"

8.7 To demonstrate the voice of non-application of mind of 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 4, Para 5.3 and Para 6 on page 2, 3 and 4 respectively records that, **"The penalty proceedings under section 271(1)(c) r.w.s. 274 of the Income Tax Act, 1961 initiated separately for concealment and furnishing inaccurate particulars of income", per contra** the



notice u/s 274 r.w.s. 271(1)(c) of the Act was issued without any limbs of section 271(1)(c) of the Act and in so far the imposition is concerned, the levy culminated on the premise of furnishing inaccurate particulars which can be evident from para 03.1 and para 03.3 page of order of penalty, which palpably 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 defended 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) and **"CIT Vs Manjunatha Cotton & Ginning Factory"** reported at 359 ITR 565 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.**

9. 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 equivocalcum unfirm stance, and therefore the proceedings suffered from non-compliance of mind with principles of ***“audi alteram partem”***.

10. 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).

11. 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 18/02/2016 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 we set aside the first appellate order and quashed the penalty order passed u/s 271(1)(c) of the Act, being bad in law.

12. Resultantly, the appeal of the appellant assessee is allowed in terms of aforestated observation.

In terms of rule 34 of ITAT Rules, 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, Nashik (Mh-India)
4. The CIT(A)-1, Nashik (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
आयकरअपीलीयन्यायाधिकरण, पुणे / ITAT, Pune.