



IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE

**BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM
AND DR. DIPAK P. RIPOTE, AM**

ITA No. 1879/PUN/2018 : Assessment Year : 2011-12

Indrajeet R. Kharde
A/P Kolhar, Tal. Rahata
Dist. Ahmednagar 413 710
PAN: AKEPK 1272 G

:Appellant

Vs.

The I.T.O. Ward 1, Ahmednagar

: Respondent

Appellant by : Shri Prasad S. Bhandari

Respondent by : Shri Arvind Desai

Date of Hearing : 29-08-2022

Date of Pronouncement : 30-08-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Id. CIT(A)-2, Pune dated 05-09-2018 for A.Y. 2011-12 as per the following grounds of appeal.

The assessee is a partner in a Partnership firm. He is regularly assessed to the tax for last 15 years. The assessee's case for the year 2011-12 was selected scrutiny and additions were made on unexplained cash credit.

The assessee has filed an appeal to the CIT(A)-2 and no proper hearing opportunity was given. So I can't able produce the documents and not given sufficient time for hearing the case.

Hence the penalty proceedings are not proper and hence we request you to kindly delete the penalty and oblige."

2. The assessee has also sought permission of this Bench to raise the following revised grounds of appeal.

1. *On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the penalty of Rs.1710,500/- levied by the Id. A.O u/s 271(1)(c) of the Act inspite of the fact that the show cause notice was issued without specifying extract limb or charge for which the penalty was initiated and levied. Thus, the impugned penalty levied being bad in law may please be deleted.*

2. *On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the penalty of Rs. 17,10,500/- levied by the Id. A.O u/s*



271(1)(c) of the Act in spite of the fact that the Id. A.O initiated the penalty by applying both the limbs i.e furnishing inaccurate particulars and concealing the particulars of income. Thus, he failed to specify the exact limb under which the penalty is initiated. Hence, the impugned penalty levied being bad in law may please be deleted.

3. Without prejudice to the above, on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the penalty of Rs. 17,10,500/- levied by the Id. A.O u/s 271(1)(c) of the Act inspite of the fact that the Id. A.O levied the penalty by invoking Explanation 1 to section 271(1)(c) whereas in the body of assessment order there is no mention of Explanation 1 at the time of initiation of impugned penalty. Hence the impugned penalty levied being bad in law may please be deleted.

3. Having heard the parties, we find that the aforesaid revised grounds raised by the assessee relate to imposition of the penalty as confirmed by the Id. CIT(A) u/s 271(1)(c) of the Act. Therefore, we admit and adjudicate the same as follows:

4. The solitary grievance of the assessee is the imposition of penalty u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") by the A.O and as confirmed by the Id. CIT(A). It is the case of the assessee that the A.O while imposing penalty was in a mind of ambiguity and has not arrived at a proper satisfaction since both in the penalty order as well as in the notice u/s 274 r.w.s. 271(1)(c) of the Act, the A.O has not struck out the inappropriate limb and has retained both the limbs of the provisions while imposing the said penalty.

3. We have perused the assessment order where initiation of penalty has been for both the furnishing inaccurate particulars of income as well as for concealment of income. That further in the penalty order at para 6 again, the A.O observed as follows:

"From the above facts, and the findings of the A.O it is clearly established that the assessee has concealed the particulars of income at Rs. 60,24,284/- and made himself liable for penalty u/s 271(1)(c). It is also fact that if the case had not been selected for scrutiny, this income would have been escaped."



4. Therefore, conclusively, the A.O in the entire process of initiation of levy of penalty u/s 271(1)(c) of the Act, was ambiguous and did not have any clarity of mind so as to under which limb of the provision, he intend to impose penalty on the assessee. There is no evidence on record to suggest that the A.O has arrived at any satisfaction. Rather, as per the penalty order and the notice u/s 274 r.w.s. 271(1)(c) of the Act, it is clear that there was ambiguity in the mind of A.O so that he has not struck off the inappropriate limb of the provision and has retained both the limbs i.e. concealment of income and furnishing of inaccurate particulars of income while imposing penalty. This exercise is not at all warranted in the realm of income-tax proceedings. The jurisdictional High court in the case of CIT Vs. Shri Samson Perinchery (2017) 392 ITR 4 (Bom) has held that the A.O is under obligation to satisfy the appropriate limb of section 271(1)(c) at the time of initiation of levy of penalty. We have also observed that the notice u/s 274 r.w.s. 271(1)(c) of the Act is ambiguous and that the A.O has not arrived at satisfaction as to which limb of the provision he is levying the penalty. The A.O has not struck off the inappropriate limb of the provision which is evidently noticed as follows:

**NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(c) OF
 THE INCOME-TAX ACT, 1961**

PAN: AKEPK 1272 G

Office of the Income-tax Officer Ward 1,
 Ahmednagar
 Dt. 05-03-2014

To

*Shri Kharde Indrajeet Rajkumar
 a/P Kolhar, Rahat
 Ahmednagar*

Sir,

Whereas in the course of proceedings before me for the A.Y. 2011-12, it appears to be that you :

Have without reasonable cause filed to comply with a notice u/s 22(4)/23(1) of the Income-tax Act, 1922 or under section 142(1)/143(2) of the Income-tax Act, 1961 No. _____ dated _____



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"Have concealed the particulars of your income or ----- furnished inaccurate particulars of such income.

You are hereby requested to appear before me at 11.00 AM/PM on 15-04-2014 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 authorised 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).

Sd/-

(SEAL) of
I.T.O. Ward 1, Ahmednagar

(H.B. Prkhe)
Income-tax Officer
Ahmednagar

5. 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. In view of the above deliberation on this issue without going into merits of the case of the assessee, on this legal ground itself, we set aside



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the order of the Id. CIT(A) and direct the A.O to delete the penalty from the hands of the assessee. The ground of appeal of the assessee is allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on this 30th August 2022.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER
Pune; Dated, this 30th day of August 2022
Ankam

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT-1 , Pune.
4. The CIT(A)-2 Pune
5. The D.R. ITAT 'A' Bench Pune.
6. Guard File

BY ORDER,

/// TRUE COPY ///

Sr. Private Secretary
ITAT, Pune



		Date	
1	Draft dictated on	30-08-2022	Sr.PS
2	Draft placed before author	31-08-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
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		