

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI

BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1392/Mum/2022

(A.Y: 2002-03)

DCIT, CC-7(1) R.No. 676B, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020	Vs.	M/s. Classic Shares and Stock Services Ltd., 121, 1 st Floor, Radha Bhawan, Nigindas Master Road, Fort, Mumbai – 400023
PAN/GIR No. : AACCC5745P		
Appellant	..	Respondent

Appellant by :	Mr.Ujjawal Kumar.DR
Respondent by :	Mr.Akash Kumar.AR

Date of Hearing	25.08.2022
Date of Pronouncement	29.08.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the CIT(A) passed u/s 271(1)(c) and 250 of the Act. The The revenue has raised the following grounds of appeal:

- 1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the penalty levied us 271(1)(c) of the Act of Rs.57,12,872/- without appreciating the facts that as per section 292B. No*

return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act".

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the penalty levied u/s 271(1)(c) of the Act of Rs.57,12,872/- by ignoring the facts that Hon'ble Delhi High Court in the case of Commissioner of Income-tax-III Vs Sudev Industries Ltd. [2018] 94 taxmann.com 373 (Delhi High Court) with reference to section 292B of the Act, has observed (in para 14) that "The aforesaid section is a broad and wide provision which lays emphasis on substance rather than form and that technicalities should not result in invalidating the proceedings, notice, orders, etc."

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the penalty levied w/s 271(1)(c) of the Act of Rs.57,12,872/- by ignoring the facts that the department has already filed appeal before Hon'ble ITAT against the order of Ld. CIT(A) for deletion of quantum addition which is pending at present.

4. The appellant craves leave to amend or alter any ground and/or add new grounds which may be necessary.

The appellant prays that the order of CIT (A)-49, Mumbai on the above grounds be set aside and that of the Assessing Officer be restored.

2. The brief facts of the case are that the assessee company is engaged in the business of dealing in shares & stock broking in shares. The assessee has filed the return of income for the A.Y 2002-03 on 31.10.2002 with a total loss of Rs. 2,72,51,541/-and the assessment was completed U/sec143(3) of the Act determining total loss of Rs.29,73,160/-. Subsequently the assessee has filed an appeal before the CIT(A) and the CIT(A) confirmed the action of the Assessing officer (A.O) on the issue of loss on share trading and sundry balance written off and granted relief in other grounds of appeal and partly allowed the appeal. Against the order of the CIT(A), the assessee has preferred an appeal before the Tribunal and the Hon'ble Tribunal has set aside both the issues of loss on trading shares and sundry bad debts written off to the file of the Assessing officer.

3. The A.O. based on the directions has issued notice u/s 143(2) and 142(1) of the Act. In compliance, the Ld. AR of the assessee appeared from time to time and

submitted the details. In the hearing proceedings the assessee was provided opportunity to file the details to substantiate the claims. Since the assessee has failed to prove the genuineness of the share transactions, the AO has made addition of loss on share trading of Rs. 2,30,47,482/- and sundry balance written off of 13,71,094/- and determined the total loss of Rs.28,32,970/- and passed the order u/sec 143(3) r.w.s 254 of the Act dated 27.12.2011.

4. Subsequently the A.O. has initiated penalty proceedings and issued show cause notice for levying penalty u/s 271(1)(c) of the Act. The A.O. found that against the quantum additions in the order passed under sec143(3) r.w.s 254 of the Act, on appeal CIT(A) has granted partial relief. The A.O. observed that there is no compliance of the assessee in spite of providing opportunity of hearing in the penalty proceedings . Finally A.O. relied on the facts and judicial decisions and applied the provisions of Sec. 271(1)(c) r.w explanation 1 of the Act and has levied penalty of Rs.57,12,872/- and passed the order u/s 271(1)(c) of the Act dated 31.03.2018.

5. Aggrieved by the penalty order, the assessee has filed an appeal before the Ld. CIT(A). The Ld. CIT(A) considered the grounds of appeal, findings of the Assessing Officer in the scrutiny assessment, submissions of the assessee and the legal issue of validity of issue of notice where the Assessing Officer has initiated the penalty notice without specifying nature/ reasons for initiation of penalty. whereas the Ld. CIT(A) dealt on the provisions on the initiation of penalty u/s 271(1)(c) of the Act. Finally the Ld. CIT(A) has considered the facts, circumstances judicial decisions and the jurisdictional Hon'ble High Court decisions and deleted the penalty and allowed the assessee's appeal.

6. Aggrieved by the CIT(A) order, the Revenue has filed an appeal before the Hon'ble Tribunal. At the time of hearing the Ld.DR submitted that the Ld. CIT(A) erred in deleting the penalty on the technicalities of the notice issued and supported the penalty order of the Assessing officer.

7. Contra the Ld.AR submitted that the assessee has submitted information before the AO and the notice issued for levy of penalty is invalid and the CIT(A) has correctly deleted the penalty relying on the facts and judicial decisions and the Ld.AR relied on the legal decisions and supported the order of the CIT(A) .

8. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue is that the CIT(A) has erred in deleting the penalty, were the assessee has challenged in the appellate proceedings on the levy of penalty being legal issue as the A.O. has not applied his mind and non striking of charge in the penalty notice i.e. whether the charge is for concealment of income or furnishing of in accurate particulars of income. We find the Jurisdictional Honble High Court of Bombay in Mohd Farhan A Shaikh Vs. DCIT in Tax Appeal No. 51 to 57 of 2012 dated 11.03.2021. (2021) 125. taxmann.com 253 (Bombay) has

dealt on this disputed issue of not striking off charge in the penalty notice would vitiate the penalty proceedings. The Hon'ble High Court has made observations at page 56 as under:

“180. One course of before us is curing a defect in the notice by referring to the assessment order, which may or not contain reason for the penalty proceedings. The other course of action is the prevention of defect in the notice – and that prevention takes just a tick mark. Prudence demands prevention is better than cure. Answers: Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Sec. 271(1)(c), does a mere defect in the notice – not striking off the irrelevant matter vitiate the penalty proceedings? 181. It does. The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the assessee. But that translates into action only through the statutory notice under Sec. 271(1)(c), r.w.s. 274 of the Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a

corollary; nevertheless, it must stand on its own. These proceedings culminate under a deferent statutory scheme that remains distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.

182. More Particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee's favour."

9. We have considered the facts, circumstances and ratio of the decision of Honble High Court and are of the view that in the present case, the CIT(A) has deleted the penalty as the A.O has not strike off the charge for levy of penalty for concealment of income or for furnishing of inaccurate particulars of income. The Ld.DR could not controvert the findings of the CIT(A) with any new cogent material evidence or information to take a different view. Accordingly we do not find any infirmity in the order of the CIT(A), who has considered the facts, provisions of law, judicial decisions and

passed a reasoned and speaking order and uphold the same and dismiss the grounds of appeal of the Revenue.

10. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 29.08.2022.

Sd/-
(BASKARAN BR)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 29.08.2022

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

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आदेशानुसार / BY ORDER,

(Asst. Registrar)
ITAT, Mumbai