

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL "B"
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.818/PUN/2019

निर्धारणवर्ष / Assessment Year : 2011-12

Mrs. Prajakta Kanitkar, C/o.Mrs. Vaishali Chetale, Fat No.102, Swajos Anand A, Anand Park, Pune – 411007. PAN: ABRPK 8540 M	Vs	The Income Tax Officer, Ward-1, Ratnagiri.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None.
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	22/07/2022
Date of pronouncement	/08/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax(Appeals)-2, Kolhapur for the A.Y. 2011-12 dated 09.04.2019, emanating from the Penalty Order u/s 271(1)(c) of the Act. The assessee raised following grounds of appeal:

“1. On the facts and circumstances of the case and in law the CIT(A) erred in confirming the penalty levied by the AO in respect of additional income in the form of Long Term Capital Gain arising on sale of shares in Indian Company.

2. On the facts and circumstances of the case and in law the CIT(A) erred in confirming the penalty levied by the AO in respect

of additional income in the form of Long Term Capital Gain arising on sale of shares in Indian Company even though the notice issued initiating the penalty proceedings is not specific as to the default under which the said proceedings are initiated.”

2. In this case, penalty under section 271(1)(c) of the Act has been levied by the Assessing Officer, Ward-1, Ratnagiri vide order dated 07.09.2016. In the assessment order passed under section 143(3) of the Act dated 11.03.2016 there has been addition on account of [sale of 2917 shares of ABB Limited on 09.08.2010 for a consideration of Rs.26,25,300/-].
3. Aggrieved by the order of the AO, the Assessee filed an appeal before the ld.CIT(A).The ld.CIT(A) confirmed the order u/s.271(1)(c) of the Act passed by the AO.
4. Aggrieved by the Penalty Order the Appellant assessee filed appeal before this Tribunal.
5. At the outset of hearing, no one appeared on behalf of the assessee. The case is decided ex-parte based on records.
6. The ld.Departmental Representative(ld.DR) for the Revenue relied on the orders of the lower authorities.

7. Heard ld.DR and Perused the records. The Assessee has challenged the “Penalty Notice” in the Ground No.2. A perusal of the Assessing Officer’s show-cause notice dated 11.03.2016 issued to the assessee u/s.274 r.w.s 271(1)(c) of the Act nowhere specified as to whether it had concealed the particulars of income or furnished inaccurate particulars of such income. This clinching fact has gone un rebutted from the Revenue’s side.

8. Faced with the situation, we quote the Hon’ble Jurisdictional High Court’s recent Full Bench decision in Mohd. Farhan A Shaikh Vs. ACIT [2021] 434 ITR 1 (Bom) that such a failure in Assessing Officer’s part in not specifying the corresponding limb in the penalty show cause notice itself is very much fatal to the entire process and not sustainable in law. We adopt the very reasoning herein as well to delete the impugned penalty for this precise reason alone.

9. Respectfully following the proposition of law laid down by the Hon’ble Bombay High Court(supra), we are of the opinion that failure on Assessing Officer’s part in not specifying the corresponding limb in the penalty show cause notice itself is very much fatal to the entire process and not sustainable in law. Therefore, we direct the AO to delete the penalty, accordingly, Ground No.2of appeal raised by the assessee is allowed. We have

not adjudicated on Ground No.1 which is on merits of the penalty as it has become academic in nature.

10. In the result, appeal of the assessee is partly allowed.

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

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 30th August, 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, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.