

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

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1866/PUN/2019
निर्धारण वर्ष / Assessment Year: 2013-14

ACIT, Circle-3, Pune.	Vs.	Gokhale Construction, Office No.2, Nirmitee Eminence, 1175-528/1, Gulwani Peth, Erandwana, Pune- 411004. PAN : AAJFG9020D
Appellant		Respondent

Revenue by : Shri Ramnath P. Murkude
Assessee by : Shri Nikhil Pathak

Date of hearing : 08.09.2022
Date of pronouncement : 26.09.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of Id. Commissioner of Income Tax (Appeals)- 1, Pune. [‘the CIT(A)’] dated 06.08.2019 for the assessment year 2013-14.

2. The Revenue raised the following grounds of appeal :-

“1. On the facts and circumstances of the case, the Ld. CIT(Appeals) erred in deleting the penalty levied u/s 271(1)(C) of the Act of Rs. 72,30,600/- without appreciating the fact that the assessee disclosed unaccounted income of Rs.2.34 crores during the survey action u/s 133A of the Act conducted on the assessee.

2. On the facts and circumstances of the case, the Ld.CIT (Appeals) failed to appreciate the fact that the disclosed unaccounted income was never part of books of accounts of the assessee & had there been no survey action on the assessee, the income of Rs. 2.34 crores would have

escaped assessment and therefore, the income declared in the return of income filed after the date of survey cannot be considered as 'voluntary'.

3. *On the facts and circumstances of the case, the Ld.CIT (Appeals) erred in the deleting the penalty without appreciating the decision of Hon'ble Supreme Court in the case of MAK Data Pvt. Ltd. CIT (2012) 358 ITR 593(SC) wherein surrender of amount after detection by the Assessing Officer in search action was not considered as being voluntary in nature and the Apex Court justified the levy of penalty u/s. 271(1)(C) of the Act.*

4. *The appellant prays to be allowed to add, amend, modify, rectify, delete or raise any grounds of appeal during the course of appellate proceedings."*

3. Briefly, the facts of the case are as under :

The respondent-assessee is a partnership firm duly registered under the Indian Partnership Act. It is engaged in the business of promoters and builders. The Return of Income for the assessment year 2013-14 was filed on 21.02.2014 declaring total income of Rs.2,69,01,320/-. It is significant to note that the survey operations u/s 133A of the Income Tax Act, 1961 ('the Act') were conducted in the business premises of the respondent-assessee on 11.10.2012. During the course of survey operations, the respondent-assessee offered an undisclosed income of Rs.2.34 crores. Consequent to the disclosure of undisclosed income, the return of income for the assessment year 2013-14 was revised on 21.02.2014 and the said undisclosed income of Rs.2.34 crores was disclosed in the revised return of income filed by the respondent-assessee. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-2(2), Pune ('the Assessing Officer') vide order dated

31.03.2016 passed u/s 143(3) of the Act at a total income of Rs.3,05,47,900/-. The Assessing Officer also issued a notice u/s 271(1)(c) initiating the penalty proceedings alleging that the respondent-assessee is guilty of concealment of particulars of income. In response to show-cause notice, the respondent-assessee filed an explanation stating that the respondent-assessee is not guilty of concealment of particulars of income nor furnishing inaccurate particulars of income. Since the income declared during the course of survey operation proceedings by assessee was disclosed in the revised return of income placing reliance on the decision of Hon'ble Delhi High Court in the case of CIT vs. Mohan Das Hassa Nand, 141 ITR 203 (Delhi). However, the Assessing Officer rejecting the above explanation of the respondent-assessee had proceeded with levy of penalty by holding that mere disclosure of income in the return of income subsequent to survey operations, does not absolve an assessee from consequences of concealment of particulars of income and, accordingly, levied penalty of Rs.72,30,600/- vide order dated 23.09.2016 passed u/s 271(1)(c) of the Act.

4. Being aggrieved by the order of penalty, an appeal was preferred before the ld. CIT(A), who vide impugned order placing reliance on the decision of the Hon'ble Delhi High Court in the case of CIT vs. SAS Pharmaceuticals, 335 ITR 259 (Delhi), CIT vs. Mohan Das Hassa Nand, 141 ITR 203 (Delhi) and the decision of

Hon'ble Supreme Court in the case of MAK Data (P.) Ltd. vs. CIT, 358 ITR 593 (SC) held that the levy of penalty was not justified in view of the fact that the penalty has to be levied only with reference to the return of income filed by the assessee. Since the income disclosed during the course of survey operations was already included in the return of income, the question of levy of penalty does not arise.

5. Being aggrieved by the decision of the ld. CIT(A), the Revenue is in appeal before us in the present appeal.

6. The ld. CIT-DR submits that during the course of survey operations, the respondent-assessee had disclosed the additional income of Rs.2.34 crores and, therefore, the respondent-assessee is guilty of concealing the particulars of income. The ratio laid down by the Hon'ble Supreme Court in the case of MAK Data (P.) Ltd. vs. CIT, 358 ITR 593 (SC) has no application to the facts of the present case.

7. On the other hand, ld. AR submits that the respondent-assessee is not guilty of furnishing inaccurate particulars of income for the reason that an item of income with reference to which the penalty was levied, was already included in the return of income. The ratio of the decision of the Hon'ble Supreme Court in the case of MAK Data (P.) Ltd. vs. CIT, 358 ITR 593 (SC) is squarely applicable to the facts of the present case.

8. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the levy of penalty u/s 271(1)(c) in a case, where the income with reference to which penalty was levied, was already included in the return of income. It is an admitted fact that the additional income declared during the course of survey operations was already included in the return of income under the provisions of section 139 of the Act. The Hon'ble Delhi High Court in the case of SAS Pharmaceuticals, in a case involving the identical facts held that no penalty could be imposed as there was no concealment or furnishing inaccurate particulars of income, as the assessee had made a complete disclosure in the return of income and offered the additional amount for the purpose of tax. The relevant paragraph of the said judgment of the Hon'ble Delhi High Court (supra) are as under :-

“15. It necessarily follows that concealment of particulars of income or furnishing of inaccurate particular of income by the assessee has to be in the income-tax return filed by it. There is sufficient indication of this in the judgment of this Court in the case of CIT v. Mohan Das Hassa Nand [1983] 141 ITR 203 / 13 Taxman 328 and in Reliance Petroproducts (P.) Ltd. (supra), the Supreme Court has clinched this aspect, viz., the assessee can furnish the particulars of income in his return and everything would depend upon the income-tax return filed by the assessee. This view gets supported by Explanation 4 as well as Explanations 5 and 5A to section 271 of the Act as contended by the learned counsel for the respondent.

16. No doubt, the discrepancies were found during the survey. This has yielded income from the assessee in the form of amount surrendered by the assessee. Presently, we are not concerned with the assessment of income, but the moot question is to whether this would attract penalty upon the assessee under the provisions of section 271(1)(c) of the Act. Obviously, no penalty can be imposed unless the conditions stipulated in the said provisions are duly and

unambiguously satisfied. Since the assessee was exposed during survey, may be, it would have not disclosed the income but for the said survey. However, there cannot be any penalty only on surmises, conjectures and possibilities. Section 271(1)(c) of the Act has to be construed strictly. Unless it is found that there is actually a concealment or non-disclosure of the particulars of income, penalty cannot be imposed. There is no such concealment or non-disclosure as the assessee had made a complete disclosure in the income-tax return and offered the surrendered amount for the purposes of tax.”

9. The ratio of the Hon’ble Delhi High Court (supra) is squarely applicable to the facts of the present case. Therefore, we are of the considered opinion that it is not a fit case for levy of penalty u/s 271(1)(c). Accordingly, we uphold the order of the Id. CIT(A) deleting the penalty of Rs.72,30,600/- u/s 271(1)(c) of the Act. Thus, the grounds of appeal filed by the Revenue stand dismissed.

10. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on this 26th day of September, 2022.

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

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 26th September, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Pune.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “A” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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