

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा, न्यायिक सदस्यके समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. Nos. 307 to 312/Kol/2022
Assessment Years : 2007-08 to 2012-13

Shri Hari Prasad Rathi (PAN: ADEPR 1530 R)	Vs.	DCIT, CC-2(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	15.09.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	29.09.2022
For the Appellant/ निर्धारिती की ओर से	Shri Rajeev Kumar, Advocate
For the Respondent/ राजस्व की ओर से	Shri Biswanath Das, CITDR

ORDER / आदेश

Per Shri Rajesh Kumar, AM:

These are the appeals preferred by the assessee against the separate orders of the Ld. Commissioner of Income Tax(Appeals)-20, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 23.12.2021 for the AYs 2007-08 to 2012-13 respectively.

2. At the outset, the ld counsel of the assessee submitted that the orders passed by the ld CIT(A) dated 23.12.2021 was noted served upon the assessee. The ld. Counsel submitted that it was noticed in the e-mail on 22.05.2022 and immediately thereafter it was forwarded to the tax counsel to prepare and filed appeals against the said orders which was filed on 27.05.2022 so there is a delay of 155 days. The period prior to

28.02.2022 falls under the Covid-19 pandemic and has to be condoned for the purpose of computation of limitation period from 15.03.2020 till 28.02.2022 in view of the decision of the Hon'ble Supreme Court in Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. Considering all these facts , there is a delay of 27 days in filing the appeal.

3. Having heard the rival submissions and considering the facts in totality, we condone this delay in the interest of justice and fair play as there is no wilful attempt on the part of the assessee to delay the filing of appeals and the assessee is in no way benefitted by the same . So all these appeals are admitted for adjudication.

4. The assessee has assailed the order of Ld. CIT(A) confirming the penalty of Rs. 8,000/- as levied by the AO u/s 271(1)(c) of the Act being 100% of tax to be evaded on technical grounds as well as on merits.

5. Facts in brief are that the assessment was framed u/s 153A read with Section 143(3) of the Act vide order dated 31.03.2015 wherein the AO initiated the penalty proceedings u/s 271(1)(c) of the Act in respect of undisclosed income of Rs. 80,000/- which was disclosed by the assessee in the income tax return . The AO passed the order without recording any satisfaction qua the charge on which the penalty was proposed in the assessment order meaning thereby that the penalty was neither initiated for concealment of income nor furnishing inaccurate particulars of income but simply stated that proceedings u/s 271(1)© were initiated separately and thereafter issued show cause notice. The AO issued notice on 31.03.2015 giving show cause notice as to why the penalty should not be imposed u/s 271(1)(c) of the Act read with Section 274 of the Act for concealment of income or furnishing inaccurate particulars of income. Finally the penalty was imposed vide order dated 21.09.2015 passed u/s 271(1)(c) read with Section 274 imposing penalty of 8,000/- by invoking explanation 5A of section 271(1)© of the Act. The said order was also confirmed by the Ld. CIT(A).

6. At the outset, the Id. Counsel drew our attention to notice issued u/s 271(1)(c) read with Section 274 dated 31.03.2015 wherein the AO has issued a notice in a mechanical form without application of mind as to on which limb the penalty was proposed to be evaded. In other words the AO has not mentioned in the notice on what charge the penalty was proposed to be levied and thus the notice was issued in standard format mentioning both the limbs i.e. concealment of income or furnishing inaccurate particulars of income. The Ld. A.R submitted that this was invalid notice as the assessee has not been given opportunity to respond to the particular charge under which the penalty was imposed to be levied and therefore the consequent penalty order passed under the said order may be quashed. In defense of his arguments the Ld. A.R relied on the decision of Hon'ble High Court of Bombay in the case of Mohd. Farhan A. Shaikh reported in [2021]125 taxmann.com 253 (Bom) and the decision of Co-ordinate Bench of ITAT, Kolkata in the case of Bihari Lal Purohit vs. ACIT in ITA No. 745/Kol/2019 for AY 2014-15 dated 31.10.2019.

7. The Ld. D.R. on the other hand, strongly opposed the arguments of Ld. A.R. and submitted that the notice has been issued validly while initiating the penalty during the course of assessment proceedings and therefore the order of Ld. CIT(A) may kindly be affirmed.

8. After hearing the rival contentions and perusing the material on record, we observe that notice issued u/s 271(1)(c) read with Section 274 of the Act dated 31.03.2015 was issued in this mechanical manner and in standard format without striking off the redundant limb or mentioning the specific charge on which the penalty was imposed to be levied. We note that the notice contains both the limbs i.e. concealment of income or furnishing inaccurate particular of income which in our considered view is wrong and amounts to invalid notice as the assessee is deprived of the opportunity to respond to the specific charge on which the penalty was proposed to be levied. Consequently penalty imposition on the basis of said invalid notice is also invalid and cannot be sustained. The case of the assessee finds support from the decision of Hon'ble Bombay High Court in the case of Mohd. Farhan A. Shaikh

(supra) wherein all the previous decisions of various High Courts have been referred and discussed in details. We therefore respectfully following the ratio laid down by the various Courts quash the penalty proceedings and also the order passed under section 271(1) of the Act. The appeal of the assessee is allowed on legal ground.

9. The issue raised in the various grounds of appeal of the assessee's appeal in ITA Nos. 308 to 312/Kol/2022 for AY 2008-09 to 2012-13 are similar as decided by us in ITA No. 307/Kol/2022 for AY 2007-08. Accordingly our finding in ITA No. 307/Kol/2022 would *mutatis mutandis* apply. So these appeals of the assessee are also allowed.

10. In the result, all the appeals of the assessee are allowed.

Order is pronounced in the open court on 29th September, 2022

Sd/-
 (Sonjoy Sarma /संजय शर्मा)
 Judicial Member/न्यायिक सदस्य

Sd/-
 (Rajesh Kumar/राजेश कुमार)
 Accountant Member/लेखा सदस्य

Dated: 29th September, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shri Hari Prasad Rathi, Shree shyam Garden, 7th Floor, 12, Hardutt Rai Chamaria Road, Howrah-711101
2. Respondent – DCIT, CC-2(2), Kolkata
3. Ld. CIT(A)- 20, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
 ITAT, Kolkata Benches, Kolkata