

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

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

आयकरअपीलसं. / ITA No.1340/PUN/2018
निर्धारणवर्ष / Assessment Year : 2011-12

Hiraman Dhamodhar Dhawale, At Post – Punawale, Near Sawata Mali Mandir, Chinchwad, Pune – 411031. PAN: AEDYPD 5342 Q	Vs	The Income Tax Officer, Ward-9(1), Pune.
Appellant/ Assessee		Respondent / Revenue

Assessee by	None.
Revenue by	Shri S P Walimbe – DR
Date of hearing	10/08/2022
Date of pronouncement	29/09/2022

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)-6, Pune for the A.Y. 2011-12 dated 28.05.2018, emanating out of order under section 271(1)(c) of the Income Tax Act, 1961 dated 04.09.2014. The assessee has raised the following grounds of appeal:

- “1. On the facts and circumstances of the case and as per law, the learned Assessing Officer erred in imposing a penalty of Rs. 4,84,662/- when the assessment order in which addition to income has been made, itself is under litigation and the assessee has already preferred an appeal against the assessment order. And said appeal itself was pending before the honorable Commissioner of Income Tax (Appeals, Pune).

2. *Without prejudice to above, the Commissioner of Income Tax (Appeals) - 6, Pune erred in passing the Appellate Order before disposing of the quantum Appeal pending before him.*

3. *Without prejudice to above, the order passed by the learned Assessing Officer U/s.271(l)(c) is against the basic principle of law. The penalty of Rs.4,84,662/- has been imposed upon the assessee without giving opportunity of being heard with respect to such penalty. The Order passed by the learned Assessing Officer suffers the violation of natural justice.*

4. *Without prejudice to above, the Commissioner of Income Tax (Appeals) -6, Pune erred in stating that there was non attendance on the hearing dates.*

5. *Without prejudice to above, on the facts and circumstances of the case and as per law, the learned Assessing Officer erred in imposing a penalty adding Rs.4,84,662/-. The learned Assessing-Officer has not given any sufficient reasons in the order for coming to the conclusion about the concealment / furnishing of inaccurate particulars by the assessee.*

6. *Without prejudice to above, on the facts and circumstances of the case and as per law, the learned Assessing Officer has erred in imposing a penalty of Rs.4,84,662/- as the assessee has neither has concealed the particulars nor furnished inaccurate particulars of his income.”*

2. Brief facts of the case are that in this case the assessment order under section 143(3) of the Act was passed on 14.03.2014. The AO made additions under section 143(3) of the Act. The Assessing

Officer(AO) also levied penalty under section 271(1)(c) of the Act vide order dated 04.09.2014.

3. Aggrieved by the penalty order of the AO, the assessee filed appeal before the Id.CIT(A). The Id.CIT(A) confirmed the penalty under section 271(1)(c) of the Act.

4. Aggrieved by the order of the Id.CIT(A), the assessee filed appeal before this Tribunal.

5. The only issue is levy of Penalty of Rs.4,84,662/- u/s 271(1)(C) of the Act. On perusal of the notice u/s 271(1)(c) dated 04.09.2014 issued by the Assessing Officer (AO), it is observed that the AO has not struck the appropriate words i.e. Concealed the particulars of Income or furnished Inaccurate particulars. In the assessment order there is no mention whether the penalty has been initiated for filling inaccurate particulars of Income or for concealment of Income.

5.1 Hon'ble Bombay High Court has held in the case of **Ganga Iron & Steel Trading Co. v/s Commissioner of Income Tax. [2022] 135 taxmann.com 244 (Bombay) order dated December, 22, 2021** as under :-

Quote, "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. ”

Unquote.

5.2 In the case under consideration the AO has not struck the appropriate in applicable words in the penalty notice. Also as mentioned in earlier para, in the assessment order the AO has not mentioned whether the penalty is initiated for concealment or filling inaccurate particulars. This issue goes to the root of initiation of penalty. Therefore, respectfully following the Hon'ble jurisdictional High Court, it is held that the penalty u/s 271(1)(c) is not

maintainable. Hence, the Assessing Officer is directed to delete the penalty u/s 271(1)(c).

6. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court on 29th September, 2022.

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

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

पुणे / Pune; दिनांक / Dated : 29th Sep, 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, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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