

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

BEFORE SHRI PARTHA SARATHI CHAUDHURY,
JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.1510/PUN/2018
निर्धारणवर्ष / Assessment Year : 2014-15

Mrs.Sharmila Yatin Palkar, Flat No.6, Second Floor, Mahavir Blessings, Plot No.613, Sector-25, PCNTDA, Nigdi, Pune – 411044. PAN: AOKPP 8981 R	Vs	The Dy.Commissioner of Income Tax, Circle-9, Pune.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Hari Krishan – AR
Revenue by	Shri Ramnath P Murkunte –DR
Date of hearing	30/08/2022
Date of pronouncement	30/09/2022

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. 2014-15 dated 20.06.2018, emanating out of order under section 271(1)(c) of the Income Tax Act, 1961 dated 27.04.2017. The assessee has raised the following grounds of appeal:

"Ground No.1.

(A) *The learned Commissioner of Income Tax (Appeals) has erred in upholding the penalty of Rs.6,74,910/- levied by Assessing Officer u/s 271(l)(c) of the Income Tax Act.*

(B) *The learned Commissioner of Income Tax (Appeals) failed to appreciate the written submissions dated 10/06/2018 filed before him explaining that the expenditure of Rs.21,84,175/- disallowed by the Assessing Officer was incurred for the business purposes of the*

Assessee and the Assessee was under the bonafide belief that it was an allowable business expenditure.

Ground No 2.

The learned Commissioner of Income Tax (Appeals) has erred in not deciding Ground No. 2 of the assessee taken before the Commissioner of Income Tax (Appeals).

Ground No.3

The learned Commissioner of Income Tax (Appeals) has erred in not deciding Ground No. 3 of the assessee taken before the Commissioner of Income Tax (Appeals).

Ground No 4.

The learned Commissioner of Income Tax (Appeals) has erred in not deciding Ground No. 4 of the assessee taken before the Commissioner of Income Tax (Appeals).

Ground No 5.

The learned Commissioner of Income Tax (Appeals) has erred in not deciding Ground No. 5 of the assessee taken before the Commissioner of Income Tax (Appeals)."

2. Brief facts of the case are that in this case the assessment order under section 143(3) of the Act was passed on 13.10.2016. 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 27.04.2017.
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 ld.Authorised Representative(ld.AR) for the assessee at the outset explained that the penalty notice dated 13.10.2016 is bad in law as the AO has not struck-off the appropriate words from words “*concealed the particulars of your Income or furnished inaccurate particulars of such Income*”. The ld.DR relied on the order of the Lower Authorities, however, the ld.DR candidly accepted that in the penalty order the appropriate words have not been struck-off.

6. Heard both the parties, perused the records. The only issue is levy of Penalty of Rs.6,74,910/- u/s 271(1)(c) of the Act. On perusal of the notice u/s.274 r.w.s 271(1)(c) dated 13.10.2016 issued by the Assessing Officer(AO), it is observed that the AO has not struck the appropriate words i.e. *have concealed the particulars of Income or furnished Inaccurate particulars of such income.*

6.1 The Hon’ble Bombay High Court in Ganga Iron & Steel Trading Co. v/s Commissioner of Income Tax[2022] 135 taxmann.com 244 (Bombay)order dated December 22, 2021 held as under:

“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.”

6.2 In the case under consideration also the AO has not struck the appropriate words in the penalty notice. Rather it is observed that in the penalty order, in para 3 the AO mentions assessee has concealed income, and therefore penalty proceedings was initiated, whereas in para 5, the AO has mentioned that penalty has been levied for furnishing inaccurate particulars of income. Thus, there is no consistency in the observations of the AO. This goes to the route of the issue. 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) of the Act, accordingly, Ground No.1(A)

