

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

आयकर अपील सं. / ITA No's.1680, 1681 & 1682 /PUN/2019
निर्धारण वर्ष / Assessment Years : 1996-97, 97-98 & 1998-99

Late Dinkar Arjun Patil, L/h Sandip D. Patil, 790/40, Raigad Colony, Panchgaon Road, Kolhapur – 416008. PAN: AHIPP 8226 A	Vs	The Income Tax Officer, Ward-1(2), Kolhapur.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Pramod Shingte – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	20/07/2022
Date of pronouncement	11/10/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

These three appeals filed by the Assessee are directed against the common order of Id.Commissioner of Income Tax(Appeals)-1, Kolhapur for Assessment years i.e.1996-97, 97-98, 98-99, all dated 23.07.2019, emanating out of orders under section 271(1)(c) of the Income Tax Act, 1961 dated 30.03.2009.These appeals were heard together and decided by common order as the issue involved is same. For the sake of convenience we take the appeal number 1680/Pune/2019 AY 1996-97 as lead case. The assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the case and in law the Ld CIT erred in not accepting the contention of the appellant that the notice

issued under section 274 rws 271 not being clear as to the default under which the proceedings are initiated, the order of the ITO is bad in law and hence needs to be quashed.

2. On the facts and circumstances of the case and in law the Ld CIT erred in not accepting the contention of the appellant that the penalty having been levied without specifying the exact nature of default i.e. whether on account of furnishing of inaccurate particulars of income or on account of concealment of income, the order of the ITO is bad in law and hence needs to be quashed.

3. On the facts and circumstances of the case and in law the Ld CIT erred in confirming penalty under section 271 (1) (c) in respect of the following additions

	<u>ADDITIONS</u>	<u>1996-97</u>	<u>1997-98</u>	<u>1998-99</u>	<u>2000-</u>	<u>2001-</u>
1	Estimated Profit on Undisclosed turnover	28,411	52,869	2,70,927	92,610	42,135
2	Amount shown as appreciation in Capital Assets	5,16,776				
3	Capital Introduction	98,011	50,000	1,10,000	5,00,000	
4	Unsecured Loans		2,20,000	1,00,000		
5	Interest on FD (Net off deduction u/s 80L)			1,800	29,396	32,220
	Total	6,43,198	3,22,869	4,92,727	6.22.006	74,355

The appellant craves leave to add to, amend, alter, delete or modify all or any of the above ground of appeal or raise a new ground of appeal before or at the time of hearing.”

2. The ld.Authorised representative for the assessee submitted at the outset that the Assessing Officer had not struck off the relevant limb of the Penalty Notice, hence as held by hon’ble jurisdictional High Court the penalty is ab initio void. The LD.AR submitted that in the Penalty Notice u/s 274 RWS 271(1)(c) the AO has not struck off the non applicable words, i.e. “Concealed particulars of Income ” “filed inaccurate particulars”. To demonstrate the same the Ld.AR took us through the Order of the Ld.CIT(A) where the Ld.CIT(A)

had given finding that AO has not explicitly mentioned the default committed by the assessee and has not explicitly mentioned the words, “furnishing the inaccurate particulars”.

3. The Ld.Departmental representative could not rebut the findings. The DR relied on the order of the ld.CIT(A) to submit that it was a curable defect u/s 292B.

4. We have heard both the parties and perused the records. It is observed that the assessee had raised the legal ground before the Ld.CIT(A) that the AO has not specified the limb under which the Penalty is levied hence the Penalty order is invalid. Before the CIT(A) the assessee submitted, which is reproduced in para 4 of the Order of the CIT(A), that the notice issued by the AO not being specific as to the default under which penalty was proposed to be levied. In this context, the Ld.CIT(A) has given the findings that the AO has not specifically mentioned the words, “furnishing of inaccurate particulars”. However, the Ld.CIT(A) has held that it was a curable defect u/s 292B. The Ld.CIT(A) also observed that at the end of each discussion leading to addition the AO has mentioned that Penalty u/s 271(1)(c) initiated for furnishing inaccurate particulars. Therefore, the Ld.CIT(A) rejected the legal ground raised by the assessee.

4.1 Thus it is an admitted fact that in the notice u/s 274 r.w.s 271(1)(c) , the AO has not specifically mentioned that the penalty had been initiated for furnishing inaccurate particulars. The Ld.DR has not rebutted this fact. It is also observed that in the last paragraph of the Assessment order the AO has mentioned as under:

“ Issue notice u/s274 rws 271(1)(c) of the Act for concealing the income and expenditure as per the Act.”

4.2 Thus, at one place the AO has mentioned that Penalty initiated for furnishing of inaccurate particulars and in the last paragraph of the Assessment Order, the AO mentioned that Penalty notice issued for Concealment of Income and expenditure. However, in the penalty order the AO has mentioned that Penalty levied for default committed u/s 271(1)(c). Thus, the AO has been changing his stand. The AO in the penalty order also was not sure whether the Penalty is for furnishing inaccurate particulars or for concealment of income. This defect goes to the root of the issue.

4.3 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.

4.4 In the case under consideration as mentioned in the earlier paragraphs that the AO had not specified in the notice whether the Penalty is for Concealment of Income or for filling inaccurate particulars of income, which is a fact mentioned by the Ld.CIT(A). This goes to the root of the issue. Also, the AO in the penalty order was also not sure whether the Penalty is for furnishing inaccurate particulars or for concealment of income. Therefore, respectfully following the decision of Hon'ble jurisdictional High Court, it is held that the penalty is not maintainable. Hence, the AO is directed to

delete the Penalty u/s 271(1)(c) levied by the AO. Thus, the Ground No.1 of the assessee is allowed.

5 Since, we have decided the legal issue in favour of the assessee, we are not adjudicating on the merits of the penalty. Therefore, ground number 2 & 3 are dismissed as not adjudicated.

ITA No's.1681/PUN/2019 and 1682/PUN/2019 :

6. The facts in the appeal number 1681/PUN/2019 and 1682/PUN/2019 are identical to the facts mentioned in the appeal number 1680/PUN/2019, our decision in appeal number 1680/PUN/2019 will apply mutatis mutanda to the appeal number 1681/PUN/2019 and 1682/PUN/2019.

7. Thus, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 11th October, 2022.

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

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

पुणे / Pune; दिनांक / Dated : 11th Oct, 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.

ITA No.1680 to 1683/PUN/2019 (04 Appeals)
Late Dinkar Arjun Patil L/h Sandip Dinkar Patil[A]

आदेशानुसार / BY ORDER,

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