

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

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

ITA No.489/PUN/2021
Assessment Year : 2011-12

B.U. Bhandari Navlakha Associates, 1182/1/3, First Floor, F.C. Road, Shivajinagar, Pune – 411 005 Maharashtra PAN : AAGFB8150Q	Vs.	DCIT, Central Circle-2(4), Pune
Appellant		Respondent

Assessee by : None
Revenue by : Shri Ramnath P.Murkude

Date of hearing : 20-10-2022
Date of pronouncement : 23-11-2022

आदेश / ORDER

PER S.S. GODARA, JM :

This assessee's appeal for AY 2011-12 arises against the CIT(A), Pune-12's order dated 13.08.2021, passed in case No. ITBA/APL/S/250/2021-22/1034869103(1), involving proceedings under 250 of the Income Tax Act, 1961 in short the Act.

Case called twice. None appears at assessee's behest. The very factual position existed on the last date of hearing i.e. 21.09.2022 as well. We thus proceed *ex-parte* against the assessee.

2. We now advert to the assessee's sole substantive grievance of imposing section 271(1)(c) penalty of Rs.29,06,389/- as per Assessing Officer's order dated 29.06.2017 and upheld in the CIT(A)'s order as under :-

“Findings:

3.2 I have considered the materials placed before me. Brief facts are that the original return of income was filed by the appellant declaring total income of Rs. 24,67,118/- on 29.06.2011. consequent to search action conducted upon the appellant on 26.02.2014 u/s 132 of the Act, the appellant filed return of income u/s 153C wherein the appellant revised the total income to Rs. 1,18,72,980/-. The AO in the order passed u/s 153C rws 143(3) on 21.12.2016, initiated penalty u/s 271(1)(c) on the additional income of Rs. 94,05,792/-, which was not disclosed in the original return filed u/s 139(1). During the appellate proceedings, the appellant contended that though the show cause notice issued u/s 274 rws 271 (1)(c) on 21.12.2016 contained specific charge of furnishing inaccurate particulars of income, the assessment order is silent on the charge on which penalty u/s 271(1)(c) was initiated. The appellant in support of the argument relied on the judgment of Hon'ble Bombay High Court in the case of Shri Samson Perinchery (supra) and judgment of Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory (supra).

3.2 I have considered the case laws relied upon by the appellant. In a recent judgment of Hon'ble Bombay High Court held by a three member bench of the Hon'ble High Court of Bombay in the case of Mohd. Farhan A. Shaikh vs. DCIT reported in [2021] 125 taxmann.com 253 (Bom.) has discussed in length initiation of penalty proceedings u/s 271 (1)(c). The issue discussed by the Hon'ble High Court was whether the assessment order or the show cause notice of penalty u/s 274 rws 271 (1)(c) should be considered as the starting point of the penalty proceedings u/s 271(1)(c). The Hon'ble court has decided the issue as under:

"Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Section 271(1)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitiating the penalty proceedings?"

181. It does. The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the assessee. But that translates into action only through the statutory notice under section 271(1)(c), read with section 274 of IT Act. True, the assessment proceedings form the basis

for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a different statutory scheme that remains distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.”

It is evident from the above that the Hon'ble High Court has unambiguously decided that assessment proceedings & penalty proceedings are not composite to draw strength from each other and the appellant should only be informed the grounds of penalty proceedings through notice u/s 274 rws 271(1)(c). Therefore, the starting point for initiation of penalty is the show cause notice and not necessarily the assessment order. In the instant case, there was no ambiguity in the notice issued u/s 274 rws 271(1)(c) and specific charge of furnishing inaccurate particulars of income was mentioned in the notice. Therefore, the appellant cannot claim that he was not made aware of the specific charge in the show cause notice. Thus, no grievance is caused to the appellant in not mentioning the charge of penalty in the assessment order since as held by the Hon'ble Bombay High Court in the case of Mohd. Farhan A. Shaikh (supra) assessment order is not the starting point of the penalty proceedings. There was also no grievance regarding levy of penalty as the penalty was levied on the charge of furnishing inaccurate particulars of income i.e. the same charge on which the penalty was initiated. Thus, I find no merit in the contention raised by the appellant.

3.4 The second contention by the appellant is that the impugned assessment year is covered u/s 271AAB being search action u/s 132 was conducted after 01.07.2012. The section 271 AAB deals with search is conducted between 01.07.2012 and 01.04.2016 involving undisclosed income of the specified previous year. In the instant case the appellant filed return of income u/s 139(1) on 29.06.2011. The time limit for filing of return of income u/s 139(1) expired on 30.09.2011. The search was conducted on 26.02.2014. Therefore, on the date of search the time limit for filing of return of income was expired. Thus, the impugned assessment year does not fall within the ambit of specified previous year and section 271 AAB is not applicable in this case. This contention raised by the appellant also has not merit.

In view of the above, I find no infirmity in the order passed by the AO u/s.271(1)(c). Ground raised by the appellant is thus dismissed.”

3. We have given our thoughtful consideration to Revenue's vehement contention supporting the impugned penalty. Mr.

Murkunde invited our attention to the Assessing Officer's detail discussion running into six pages that the assessee was indeed found to have furnished inaccurate particulars of income and therefore, the learned assessing authority invoked Explanation 5 of section 271(1)(c) of the Act as it is evident from a perusal of para 8 in his order.

4. We find no merit in the Revenue's foregoing arguments. We make it clear that the search herein is dated 30.08.2013 whereas the learned lower authorities have invoked section 271(1)(c) Explanation 5 which was applicable only upto the search action carried out on or before 01.06.2007. Mr. Murkunde at this stage sought to apply Explanation 5 to section 271(1)(c) before us. We are afraid that such course of action is hardly available to the department before us in second appellate proceedings u/s 254 of the Act. This is indeed coupled with the fact that the assessment proceedings herein have been completed u/s 153C of the Act only. Be that as it may, we conclude that learned lower authorities have wrongly invoked the statutory provisions itself i.e. Explanation 5 to section 271(1)(c) of the Act in the given facts and circumstances of the case. The impugned penalty stands deleted in very terms therefore.

5. This assessee's appeal is allowed in above terms.

Order pronounced in the Open Court on 23rd November, 2022.

Sd/-
(DIPAK P RIPOTE)
ACCOUNTANT MEMBER

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

पुणे Pune; दिनांक Dated : 23rd November, 2022

Sujeet

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The concerned CIT(A) concerned;
4. The CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" /
DR 'A', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

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