



॥ आयकर अपीलिय न्यायाधिकरण, पुणे "बी" न्यायपीठ, पुणे में ॥



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

BEFORE HON'BLE SHRI S.S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.704/PUN/2018

निर्धारण वर्ष / Assessment Year : 2008-2009

Shri Kumar P Gera

200, Gera Plaza, Boat Club Rd., Pune.

PAN : AAYPG8748B

..... अपीलार्थी / **Appellant**

बनाम / V/s.

Pr. Commissioner of Income Tax,

Central, Pune - 411037

..... प्रत्यर्थी / **Respondent**

द्वारा / Appearances

Assessee by : Shri S. K. Tyagi & R. S. Soniminde

Revenue by : Shri M. G. Jasnani

सुनवाई की तारीख / Date of conclusive Hearing : 06/10/2022

घोषणा की तारीख / Date of Pronouncement : 29/11/2022

आदेश / ORDER

Per G. D. Padmahshali, AM;

The present appeal for the assessment year [for short "AY"] 2008-09 is assailed against the revisionary order of Principal Commissioner of Income Tax (Central), Pune [for short "PCIT"] dt. 20/03/2018 passed u/s 263 of the Income-tax Act, 1961 [for short "the Act"] which stemmed out of order dropping penalty [for short "PO"] dt. 29/04/2016 passed by the DCIT, Central Circle-1(3), Pune [for short "AO"] u/s 271(1)(c) of the Act.



2.To advance the matter for adjudication, it is essential to reproduce **grounds challenged** by the appellant as under;

“1. The learned (ld) Pr. CIT erred in passing the impugned order under section 263 of the Income Tax Act, 1961 (the Act), on the basis of his erroneous observation that the Assessing Officer (AO) had dropped the penalty proceedings under section 271(1)(c) of the Act, for the AY 2008-09, without application of mind, particularly without consideration of the implication of Explanation 5A to section 271(1) of the Act.

2. The Pr. CIT has failed to appreciate that the AO was fully empowered to drop the penalty proceedings initiated under section 271(1)(c) of the Act, in view of the provisions of section 271(1)(c) of the Act, notwithstanding the aforesaid Explanation 5A to section 271(1) of the Act.

3. The ld. Pr. CIT erred in not appreciating the fact that the AO had dropped the penalty under section 271(1)(c) of the Act, for the AY 2008-09 vide his order dt. 29.4.2016 after taking into consideration the relevant factual and legal position as explained by the appellant, vide his letter dt. 22.2.2016.

4. The ld. Pr. CIT grossly erred in totally ignoring the submission of the appellant, in regard to the scope of an Explanation appended to section of the Act, particularly the legal position that the same is subordinate to the main provisions of the Act.

5. The ld. Pr. CIT grossly erred in totally ignoring the very vital submission of the appellant that where two views are possible and the AO has taken one view with



which the CIT does not agree the order could not be treated as erroneous and prejudicial to the interest to one another.

6. All the aforesaid grounds of the appeal are without prejudice to one another.

7. The appellant craves leave to add, alter, amend, modify or delete any or all the aforesaid grounds of appeal.”

3. The substantive ground of appeal hinges around challenging the revisionary action over dropping-off of penalty proceedings initiated u/s 271(1)(c) of the Act.

4. Laconically narrated facts of the case are;

4.1 The appellant is an individual engaged in the business of builder & developers and the key person of **Gera Group**, upon whom a search u/s 132 of the Act was carried out on 11/09/2014 and from the seized material the appellant found received a cash of ₹104.76 Lakhs from undisclosed which the assessee admitted as his income from undisclosed sources and offered to tax during the course of reassessment proceedings u/s 143 r.w.s. 143(3) of the Act, consequent to which penal provision u/s 271(1)(c) of the Act was triggered.



4.2 During the penal proceedings, the assessee was put to show cause notice [for short "SCN"] dt. 30/10/2015 and considering the written submission dt. 22/03/2016, the Ld. AO dropped the penalty proceedings by a tag lined order as; ***"The penalty proceedings initiated in case of Sh Kumar P Gera are hereby dropped."***, which tended 263 revisionary action on the appellant.

4.3 The Ld. PCIT vouching the action of his tax authority below [for short "**TAB**"], invoked the revisionary jurisdiction u/s 263 contenting the order dropping penalty as erroneous and prejudicial to the interest of revenue for a solitary reason of ignoring the applicability of explanation 5A to section 271(1) of the Act. Since the appellant's submissions during the course of revisionary proceedings did not inspire any confidence, consequently the Ld. PCIT by setting aside the order dropping penalty directed the Ld. AO for de-nova adjudication of penal proceedings in the light of applicability of explanation 5A to section 271(1).



5. During the course of physical hearing, the learned counsel for the assessee [for short "**AR**"], at the outset, in support of first legal ground raised, it is submitted that, the **initiation of penalty de-facto suffers from voice of non-application of mind** and acknowledging the same in the light of juridical pronouncement, the penalty proceedings were rightly dropped **in limine** by the Ld. AO, thus view one being plausible must remain irrefutable, consequently the jurisdiction to review fails. The learned departmental representative [for short "**DR**"] candidly jellied the deficiency in the impugned SCN, however drawn our attention to single tag lined order of the Ld. AO and contented that, non-application is also simulated in the order dropping penalty, hence for the reason the revisionary jurisdiction is validly triggered, which may be sustained.

6. After hearing to rival contentions of both the parties; and subject to the provisions of rule 18 **ITAT, Rules** perused the copy of SCN issued u/s 274 r.w.s. 271(1)(c), case laws relied upon by the appellant as



well the respondent and duly considered the facts of the case in the light of settled legal position forewarned to either parties.

7. In the extant appeal, considering the facts of the case **extenso**, it is apparently palpable from page 11-14 of the paper book that, the appellant in his written reply dt. 22/02/2016 to impugned SCN, referring to the deficiency contained therein has entreated the Ld. AO for dropping-off the 271(1)(c) penalty proceedings in support of judgement of Hon'ble Karnataka High Court in the case of "**CIT Vs Manjunatha Cotton & Ginning Factory**" reported at 359 ITR 565 and considering the same extenso, the Ld. AO pulled the plug by an order. However, the Ld. PCIT carried away by a single tag lined order without due verification of record placed before him and framed an adverse opinion on the same facts & circumstances pulling into service the applicability of explanation 5A to section 271(1) without first demonstrating fulfilment of twin conditions pre-requisite for assumption of revisionary jurisdiction.



8. In this context it is apt to quote that, Hon'ble Bombay High Court while adjudicating the similar issue in the case of **"CIT Vs Gabriel India Ltd"** reported at 203 ITR 108, referring to the ration laid down by Hon'ble Justice Raghuvver in "Sirpur Paper Mills Ltd Vs ITO", tumbledown the revisionary action in para 10 thereof which reads as;

"10. As observed in Sirpur Paper Mills Ltd. v. ITO by Raghuvver J. (as his Lordship then was), the Department cannot be permitted to begin fresh litigation because of new views they entertain on facts or new versions which they present as to what should be the inference or proper inference either of the facts disclosed or the weight of the circumstances. If this is permitted, litigation would have no end, "except when legal ingenuity is exhausted". To do so, is ". . . to divide one argument into two and to multiply the litigation".

(Emphasis supplied)

9. Considering the facts of the case in nutshell, we concede with the contention of the Ld. AR that, in support of appellant claim as expounded hereinbefore at para 7, there was indeed unvarying and indistinguishable material placed before Ld. TAB



during the course of penalty proceedings vis-à-vis revisionary proceeding, which in turn demonstrates that, the Ld. AO after carrying out an inquiry with respect to eligibility of appellants claim, basis of claim and compliance relating thereto (if any) has then culminated the penal proceedings taking one of the plausible view in the light of settled legal position in dropping-off the proceedings initiated u/s 271(1)(c) of the Act, whereas in a revisionary proceedings Ld. PCIT yet again conducted an inquiry into the claim of the appellant based on the like material and sitting on the same fence displaced with the views of Ld. AO and directed for de-nova proceeding by pressing into service the applicability of explanation 5A to section 271(1) which ostensibly is impermissible under a law following the ration laid in down by Hon'ble Jurisdictional High Court in "CIT Vs Gabriel India Ltd." (supra). As it is a well settled law that, an inquiry and/or fresh determination can be directed by the revisionary authority only after coming to the conclusion that the finding of the Ld. AO is erroneous



and prejudicial to the interests of the Revenue on the basis of evidential material and without doing so, the authority turns toothless to disturb the completed proceedings, hence for the reason in our considered opinion, the conclusion drawn by the Ld. PCIT is untenable in law, ergo finding no infirmity with the order dropping the penalty, we quash the revisionary order.

10. Resultantly, the appeal of the appellant assessee is allowed in terms of aforesaid observation.

In terms of rule 34 of ITAT Rules, 1963 the order is pronounced in the open court on this Tuesday 29th day of November, 2022.

-S/d-

**S. S. GODARA
JUDICIAL MEMBER**

-S/d-

**G. D. PADMAHSHALI
ACCOUNTANT MEMBER**

पुणे / PUNE ; दिनांक / Dated : 29th day of November, 2022.

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

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The Pr. CIT-Central, Pune (Mh-India)

4. The PCIT, Circle-1, Pune (Mh-India)

5. विभागीय प्रतिनिधि, आयकर अपीलीय न्यायाधिकरण, पुणे "बी" बेंच, पुणे / DR, ITAT, Pune "B" Bench, Pune.

6. गार्डफ़ाइल / Guard File.

आदेशानुसार / By Order,

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.