

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI
BEFORE SHRI B. R. BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No.1453/Mum/2022
(Assessment Year: 2010-11)

Shri Arvind Damodarlal Biyani 6-161, Mittal Estate, Sir M. V. Road, Andheri (E), Mumbai-400 059	Vs.	DCIT-11(2) Mumbai
PAN/GIR No. AADPB 0689 H		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Hiro Rai
Revenue by	:	Shri Manoj Sinha
Date of Hearing	:	11.10.2022
Date of Pronouncement	:	06.01.2023

ORDER

Per Kavitha Rajagopal, J. M.:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘Id.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short), passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2010-11.

2. The solitary issue involved in this appeal is levy of penalty u/s. 271(1)(c) of the Act by the Assessing Officer (AO for short) and confirmed by the Id. CIT(A) on the ground that the same is illegal and invalid as the A.O. has failed to specify under which limb of section 271(1)(c), the penalty was levied.

3. The brief facts of the case are that the assessee is a director in M/s. Damodar Yarn Manufacturing Pvt. Ltd. from where the assessee had received remuneration. The

assessee filed his return of income dated 26.07.2010, declaring total income at Rs.19,88,524/- after claiming deduction u/s. 80C and u/s.80D, amounting to Rs.1,00,000/- and Rs.15,000/- respectively. The assessee's case was selected for scrutiny and the assessment order dated 11.01.2013 was passed u/s. 143(3) of the Act where the A.O. had made certain additions/disallowances. The A.O. had also initiated penalty proceedings and penalty amounting to Rs.15,85,836/- was levied vide order dated 29.03.2016.

4. The assessee was in appeal before the Id. CIT(A), challenging the assessment order and the penalty order before the Id. CIT(A). It is observed that the quantum addition as well as the penalty has been confirmed by the Id. CIT(A).

5. The assessee is now before us challenging the order of the Id. CIT(A) in confirming the penalty levied u/s. 271(1)(c) of the Act on the ground that the A.O. has failed to specify under which limb of section 271(1)(c), penalty was levied, i.e., either for concealment of income or for furnishing of inaccurate particulars of income.

6. The Id. AR for the same contended that the penalty notice dated 11.05.2013 did not specify, on what limbs of the provision of section 271(1)(c), penalty was levied. The Id. AR further stated that the A.O. has failed to strike of the irrelevant ground in the penalty notice. The Id. AR relied on the decision of the Hon'ble Bombay High Court in the case of *Mohd. Farhan A. Shaikh v. ACIT 320 CTR 26 (Bom)(FB)*.

7. The Id. Departmental Representative (Id. DR for short), on the other hand, controverted the same and relied on the decision of the lower authorities.

8. Having heard the rival submissions and perused the materials available on record, it is observed that the assessee's case was selected for scrutiny, as the assessee has earned interest income, amounting to Rs.27,33,699/- and other income, amounting to Rs.27,59,226/-, against which interest expenditure amounting to Rs.51,76,302/- has been claimed by the assessee, thereby arriving at net interest income at nil. The A.O. has held that the assessee has not proved the genuinity of the transaction and has also not substantiated the claim of deduction, thereby initiating the penalty proceeding against the assessee. It is observed that the statutory notice u/s. 271(1)(c) of the Act r.w.s. 274 dated 11.01.2013 reveals that the A.O. has failed to specify on which ground, the notice has been issued u/s. 271(1)(c) of the Act without striking of the irrelevant ground. It is also observed from the assessment order that the A.O. has failed to specify on what grounds penalty has been levied u/s. 271(1)(c) of the Act, i.e., for concealment of particulars of assessee's income or for furnishing of inaccurate particulars of such income. We would like to place our reliance on the decision of the Hon'ble Bombay High Court in the case of *Mohd. Farhan A. Shaikh* (supra), where the Hon'ble Jurisdictional High Court has held that the penalty proceeding is vitiated, if there is a lacuna in the notice in not striking out the irrelevant ground by the A.O. It is evident from the said decision that if the printed format of the notice issued to the assessee by the A.O., the inapplicable portion is not struck off as to which limb the penalty is proposed to be imposed then the same is inferred to be non-application of mind by the A.O. which resultantly vitiates the imposition of penalty. Thus, it is clear that the intention of the statutory notice is to make the noticee be conscious of the ground of the notice to present his case pertaining to the said ground.

9. By respectfully following the above decision, we are of the considered view that the defect in the statutory notice in not striking out of the irrelevant ground vitiates the penalty proceedings for the reason that the assessee has not given sufficient notice for preparing his defense, as to the grounds on which the penalty proceedings have been initiated.

10. From the above observation, we deem it fit and proper to delete the penalty levied by the A.O. on this legal ground.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 06.01.2023

Sd/-

Sd/-

(B. R. Baskaran)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 06.01.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai