

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA.NO.4246/MUM/2018 (A.Y: 2011-12)

Vinod Ratan Patil Shanti Niwas, Katai Gaon Kalyan Shil Road Dombivili (E) - 421201 PAN: AKWPP4159M (Appellant)	v.	CIT (A) – 1 Room No. 29,A-Wing, 6 th Floor Ashar I.T. Park, Road No. 16Z Wagle Industrial Estate Thane, Mumbai - 400604 (Respondent)
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Assessee Represented by	:	None
Department Represented by	:	Shri. Pankaj Kumar
Date of Hearing	:	24.11.2022
Date of Pronouncement	:	10.02.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)-1, Thane [hereinafter in short "Ld.CIT(A)"] dated 28.03.2018 for the A.Y.2011-12.

2. Brief facts of the case are, assessee has filed its return of income on 06.10.2011 declaring total income of ₹.37,41,570/-. The case was

selected for scrutiny under CASS and notices u/s. 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. Subsequently, the assessment was completed u/s. 143(3) vide order dated 28.02.2014 and the total income assessed at ₹.2,18,16,160/- by making following additions: -

- (i). Commission expenses disallowed u/s 37(1) of the Act ₹.1,29,33,500/-
- (ii). Unproved cash expenses disallowed u/s. 37(1) of the Act ₹.39,91,540/-
- (iii). Disallowance of business expenses to the extent of ₹.7,49,548/-
- (iv). Addition on account of cash deposit u/s. 68 of the Act of ₹.4,00,000/-

3. The Assessing Officer initiated the penalty proceedings, accordingly.

4. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) partly allowed lower authorities by giving relief on commission expenses and sustained the addition to the extent of ₹.54,33,500/- and other additions were sustained by the Ld.CIT(A). subsequently Assessing Officer imitated the penalty proceedings and levied the penalty to the extent of 100% of the tax sought to be evade.

5. Aggrieved assessee preferred appeal before us raising following grounds in its appeal: -

"The Ld. Commissioner of Income Tax Appeals -1 and Ld. Assessing Officer has passed the order by levying the penalty on disallowances of: -

a) 54,33,500/- as commission expenses.

b) 4,00,000/- as unexplained cash deposits.

a). But the officer has failed to examine the fact that Commission expenses were all paid through cheque and income tax returns of the assessee's to whom the payments were made were also available. Further, confirmation and bank statements of the said parties could also be provided but, getting additional evidences to prove the transactions were becoming difficult as it started affecting the relation and business with the parties to whom the commission were paid. Therefore, leaving penalty on such genuine expenses is not appropriate. Not pressing on certain issues during the appeal proceedings doesn't mean that the expense were not genuine. At certain point the assessee do not stress on certain contention just to avoid further litigation and involvement of time. Hence, we request your goodself not to levy penalty on the addition of commission of Rs. 54,33,500/-

b). Cash deposits made during the A.Y. 2011-12 to the tune of Rs. 4,00,000/- were actually made on account of certain cash sales. The assessee is also into the business of sale of building material supplier, and at instances he has to make sales in cash which is effectively deposited into his bank account for further purchases or expenses. These kind of transactions are very normal and day to day considering the business activity. Hence, taxing on such transaction on account of penalty is unreasonable.

The Appellant therefore prays that appropriate relief as asked for may kindly be granted to the appellant.

The appellant craves to leave to add, amend or withdraw any grounds of appeal before the order is passed."

6. We observed from the record that the hearing was posted since 27.05.2019, none appeared on behalf of the assessee until today hearing i.e., 24.11.2022. The hearing was posted 27 times and none appeared. We deem it fit and proper to proceed to dispose off the appeal as it is pending from 2019. Since the assessee has not appeared in spite of the

several notices, we dispose off this appeal on merits with the assistance of Ld.DR.

7. Ld. DR briefly explained the facts and supported the orders of the lower authorities.

8. Considered the submissions of the Ld.DR and material placed on record, and perused the material placed on record, orders of the authorities below. On perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and the averments in the Assessment Order and partly sustained the penalty levied by the Assessing Officer. While holding so, the Ld.CIT(A) observed as under: -

"6.1. The careful reading of the above findings, in quantum appeal order, reveals that the appellant had evaded the tax in respect of various amounts, which have been sustained by giving detailed findings. As regards the addition of Rs.75,00,000/- deleted by the CIT(A)- 1, Thane, the revenue / department had filed 2nd appeal with the ITAT, Mumbai, [raising the grounds of appeal that "the Hon'ble CIT(A) erred in deleting the disallowance of Rs.75,00,000/- in respect of Shri Kashinath Patil on the basis of additional evidence without obtaining remand report from the AO as per the provisions of Rule 46A."]. The said appeal of the Department has been dismissed by the Hon'ble ITAT, Mumbai Bench "F", Mumbai, vide appeal order decided in ITA No. 4573/M/2015, dated 20.09.2017.

6.2. As regard the remaining additions, which have been upheld, the appellant had not challenged the above appeal order, against the quantum addition, before the Hon'ble ITAT, which implies that he had accepted the fact that he had concealed his income to the extent

of Rs. 1,05,74,588/-, by furnishing inaccurate particulars. While deciding the quantum appeal, the facts in this regard, have been clearly brought on record, as above and the above findings are equally applicable in appeal order, against penalty levied. Had the case not been selected for scrutiny, the concealed income to this extent i.e. Rs. 1,05,74,588/-, in the year under appeal, would have escaped assessment. In view of these facts I am satisfied that the appellant had tried to evade the tax against income of Rs.1,05,74,588/-, by filing inaccurate particulars, therefore, this is a fit case for imposition of penalty u/s. 271(1)(c) of the Act.

6.3 In this regard, I would like to place my reliance on the decisions of Hon'ble supreme Court, in the case of CIT Vs Chanchal Katyal (All) 173 Taxman 71, wherein the Assessee did not furnish any valid explanation and levy of penalty u/s 271(1)(c) of the Act was upheld. In the case of CIT Vs Lalchand Tirath Ram (P&H) 225 ITR 675, it was held that "Mere offering explanation is not sufficient. Explanation has to be substantiated by cogent and reliable evidence". Reliance is also placed on the following decisions:-

a) *Steel Infots Ltd Vs CIT*, 296 ITR 228, M. P. High Court, wherein it was held that in case of concealment of true income chargeable to tax by making bogus claim, levy of penalty u/s 271(1)(c) r.w. Explanation 1 is justified.

b) *Kuttookaran Machine Tools Vs ACIT*, 313 ITR 413, Kerala High Court, wherein it is held that levy of penalty was confirmed on the fact that the assessee had made bogus claim of investment allowance and depreciation in respect of machinery, which was not purchased installed or commissioned.

c) *CIT Vs Escorts Finance Ltd*, 813 Taxman 453 (delhi)/2010 328 ITR 44 (Delhi) / 2009 226 CTR 105, wherein it was held that if the claim made in return of income appears to be ex facie bogus, it would be treated as a case of concealment of particulars and penalty would be justified.

d) *CIT VS Zoom Communication (P) Ltd*, 191 Taxmann 179 (delhi)/[2010] 327 ITR 510 (Delhi)/[2010] 233 CTR 465 wherein it was held that if assessee makes a claim which is not only incorrect in law, but is also wholly without any basis and explanation furnished by him for making such claim is not found to be bonafide,

Explanation 1 to Sec 271(1)(c) would come into play and assessee will be liable to penalty.

6.3. *As regard the penalty u/s. 271(1)(c) of the I.T. Act is concerned it is held in many cases that the same is a civil liability and cannot be equated with the criminal liability, as has been provided in Section 276 of the Act. In this regard, I would like to place reliance on the decisions delivered by the courts, in following cases:*

- i) Ravi & Co Vs ACIT, 271 ITR 286 (Mad)*
- ii) Bhairavlal Verma Vs Union of India, 230 ITR 855 (All)*
- iii) CIT Vs Rakesh Suri, 331 ITR 458 (All)*

6.4 *In the case of In Union of India vs. Dharmendra Textile Processors (2008-TIOL- 192-SC-CX-LB), the Supreme Court examined Section 271(1)(c) of the Act and other provisions for imposition of penalty in different statutory enactments. It was held that penalty in such cases imposed for tax delinquency is a civil obligation, remedial and coercive in nature and is far different from penalty for crime or a fine or forfeiture as stipulated in criminal or penal laws. It refers to blameworthy conduct for contravention of the Act and it equally applies to tax delinquency cases. Mens rea or willful failure or conduct is not required to be proved and established. Mens rea is essential or sine-qua-non for criminal offences but is not an essential element for imposing penalty for breach of civil obligations or liabilities. Thus, penalty u/s. 271(1)(c) of the Act, is imposed when an assessee conceals his income or furnishes incorrect particulars."*

6.5. *Keeping in view the facts as discussed above, in my considered opinion, the appellant has concealed income of Rs.1,05,74,588/-, by filing inaccurate particulars in the year under appeal, therefore, the AO has rightly levied the minimum penalty of Rs. 32,67,547/- w/s. 271(1)(c) of the IT. Act, being 100% of tax sought to be evaded, accordingly sustained and the above grounds of appeal are dismissed."*

9. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we do not find any reason to interfere with the findings of

the Ld.CIT(A) especially when there is no representation from the assessee side. Accordingly, appeal filed by the assessee is dismissed.

10. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 10th February, 2023

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai / Dated 10/02/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum