

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT
“SMC” BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.369/SRT/2022 (AY 2012-13)

(Hearing in physical Court)

Ashvin Narayan Bajoria (HUF) 226, Sagar Building, Arihant Awas, Moti Begumwadi, Surat-395002 PAN No: AAKHA 3667 H	Vs	Income Tax Officer, Ward-1(2)(1), Aayakar Bhawan, Majura Gate, qSurat-395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से /Assessee by	Shri Ramesh Malpani, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	23.02.2023
उद्घोषणा की तारीख/Date of pronouncement	07.03.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “NFAC/Ld.CIT(A)”] dated 24.11.2022 for assessment year 2012-13, which in turn arises against penalty levied by the by assessing officer under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 13.08.2021 for the assessment year 2012-13. The assessee has raised the following grounds of appeal:-

“1. That on the facts of the case as well as in law, learned CIT(A), NFAC, has erred in upholding the penalty levied of Rs.8,24,790/- u/s 271(1)(c) of the Income Tax Act, 1961 (the Act). The penalty so

levied by ld. AO and upheld by Hon'ble CIT(A) is wrong, unjustified and contrary to the law. Appellant prays for deleting the same.

2. The appellant craves leave to add, alter or modify any grounds of the appeal.”

2. Brief facts of the case are that assessee is Hindu Undivided Family (HUF), filed his return declaring of Rs.2,00,990/- on 19.02.2013 for assessment year 2012-13. Subsequently on the basis of information received from Investigation Wing, Ahmedabad, wherein it was informed that assessee has made transaction in Penny Stock Scrip of 'Twenty First Century' during the year under consideration, which is penny stock transaction. On the basis of such information, after verifying the information and recording satisfaction, the Assessing Officer recorded reasons and reopened the case under section 147 of the Act. Notice under section 148 was issued on 25.03.2019. In response said notice, the assessee filed his return of income declaring Rs.31,68,390/- on 08.04.2019. The assessee in his return of income offered additional income of Rs.29,67,398/- on account of income earned on transfer of shares of 'Twenty First Century'. The Assessing Officer after serving statutory notices under section 143(2) r.w.s. 142(1) proceeded for assessment. The

Assessing Officer while passing assessment order, accepted the return of income, filed in response to notice issued under section 148 of the Act. The assessment order was passed assessment on 15.11.2019 under section 143(3) r.w.s. 147 of the Act and initiated penalty under section 271(1)(c) of the Act.

3. The Assessing Officer issued show cause notice for levying penalty under section 271(1)(c) of the Act. The assessee filed his reply and contended therein that assessee has already included the income earned on script of Twenty First Century, in his return of income and paid tax therein. The assessee also furnished of his computation of income. The assessee submitted that he has paid the tax on such income before providing reasons of reopening and return of assessee filed under section 148 of the Act, which was accepted without any addition. The reply of assessee was not accepted by Assessing Officer by taking view, had the proceedings under section 147 of the Act not been initiated, the assessee was not going to offer the correct income for taxation. The Assessing Officer levied penalty @100% of tax sought to be evaded.

4. Aggrieved by the order of levy of penalty the assessee filed appeal before Ld. CIT(A). The case of assessee migrated before NFAC/Ld. CIT(A). Before NFAC/Ld. CIT(A) the assessee filed similar submission as submitted in response to notice issued under section 274 r.w.s 271(1)(c) of the Act. The NFAC/Ld. CIT(A) after considering the submission of assessee held that submission / argument of assessee has no force that assessee had willfully concealed his particulars of income upheld the penalty under section 271(1)(c) of the Act. Further aggrieved, the assessee has filed present appeal before the Tribunal.

5. I have heard the submissions of learned Authorized Representative (Ld.AR) for the assessee and Ld. Senior Departmental-Representative (Ld. Sr-DR) for the Revenue and perused the orders of lower authorities carefully. The Ld. AR for the assessee submits that in response to notice under section 148, the assessee filed return of income on 30.04.2019 and included income of Rs. 29,67,398/- earned on transfer of shares as well as interest from bank account of Rs.3,487/-. The return of assessee was accepted without any variation. The Ld.AR for the assessee submits that there

was no concealment of income furnished so far as income offered in response to notice issued under section 148 of the Act. Thus, the Assessing Officer has no occasion to hold that assessee concealed his income in his return in response to notice issued under section 148 of the Act. Such return is to be considered as return of income filed under section 139(1) for the purpose of penalty imposed under section 271(1)(c) and penalty is to be levied on income assessed over and above return of income, if any, there is no income assessed over and above return of income. Therefore, penalty levied by Assessing Officer was not justified. To support his submission, Ld. AR of the assessee relied upon the case laws of Hon'ble jurisdictional High Court in the case of Kirit Dahyabhai Patel vs. Assistant Commissioner of Income-tax [2017] 80 taxmann.com 162 (Guj)/[2015] 280 CTR 216 (Guj)[03-12-2014], Commissioner of Income-tax, Ahmedabad-IV vs. Whiteford India Ltd. [2013] 38 taxmann.com 15 (Guj)/[2013] 219 Taxman 98 (Guj)(Mag.)(24.06.2013) and Hon'ble Punjab & Haryana High Court in the case of Commissioner of Income-tax,

Karnal vs. Rajiv Garg [2008] 175 Taxman 184 (P&H)/[2008] 313 ITR (P&H)/[2009] 224 CTR 321 (P&H)[22-07-2008].

6. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities.
7. I have considered the rival submission of both the parties and have gone through the orders of lower authorities carefully. I find that in response to notice issued under section 148 of the Act, the assessee filed his return of income declaring income of Rs.31,68,390/-. There is no dispute that in the return filed, in response to notice issued under section 148 of the Act, the assessee included the income earned from transfer of shares of Twenty First Century. The return was accepted by Assessing Officer without any variation.
8. I find that Hon'ble Punjab & Haryana High Court in the case of Rajiv Garg (supra) held that when assessing officer, on the basis of information received from revenue authorities that sale of shares on which capital gain had been declared by assessee in original return, was bogus, issued notice under section 148 to assessee. The assessee in response to said notice, assessee filed revised return surrendering entire

amount of sale proceeds of shares to buy peace of mind and to avoid hazards of litigation and also to save himself from any penal action. The Assessing Officer framed assessment on basis of revised return and also imposed penalty under section 271(1)(c) upon assessee holding that he had filed revised return after detection of concealment of income by department and since he had intentionally played fraud to avoid higher rate of tax, he was guilty in terms of section 271(1)(c). It was held by High Court that assessing officer had simply rested his conclusion on act of assessee of having offered additional income in revised return and had failed to take any objection that declaration of income made by assessee in his revised return and his explanation were not *bona fide*, penalty imposed upon assessee, was not justified and had rightly been set aside by appellate authorities.

9. Further, Hon'ble jurisdictional High Court in the case of Kirit Dahyabhai Patel (supra) also held that return of income filed in response to notice under section 153A is to be considered as return filed under section 139 for purpose of penalty under section 271(1)(c) and penalty is to be levied

on income assessed over and above income returned under section 153A, if any. Further Hon'ble Jurisdictional High Court in CIT Vs Whiteford India Limited (supra) held that in absence of clear finding of assessing officer whether assessee is guilty of concealment or furnishing inaccurate particulars of income, penalty levied under section 271(1)(c) cannot be sustained. I find that ratio of decisions of Hon'ble Punjab & Haryana and Hon'ble jurisdictional High Court in the aforesaid case are squarely applicable on the facts and circumstances of the present case. Hence, I direct the Assessing Officer delete the entire penalty addition of Rs.8,24,790/- under section 271(1)(c). in the result, the grounds of appeal raised by assessee is allowed.

10.In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 07/03/2023.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: /03/2023
Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

// True Copy //

By order

Senior Private Secretary/
Secretary/Assistant Registrar, Private
Surat ITAT,