

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

ITA Nos.3030/Mum/2022
(Assessment Years: 2010-11)

Mukesh Desai 9, Madhu Kunj, Tejpal Road, Vile Parle (E), Mumbai-400 057	V s.	ITO, Ward-25(3)(1) Mumbai
PAN/GIR No. AABPD 7788 D		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Akash Kumar
Revenue by	:	Ms. Mahita Nair
Date of Hearing	:	21.03.2023
Date of Pronouncement	:	31.03.2023

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 that the assessee has challenged the penalty levied u/s. 271(1)(c) of the Act amounting to Rs.65,61,479/-.

3. The brief facts of the case are that the assessee is an individual and proprietor of M/s. Pathik Computers. The assessee filed its return of income for the impugned year dated 14.10.2010, declaring total income at Rs.18,33,430/-. The assessee's case was selected for scrutiny in the assessment order u/s. 143(3) of the Act passed on 30.03.2013, determining the total income at Rs.2,31,88,490/- where the Assessing Officer had made

various additions on bogus purchases, foreign travel expense, depreciation and cash deposits aggregating to Rs.2,13,55,059/-.

4. The A.O. initiated the penalty proceedings u/s. 271(1)(c) of the Act vide order dated 31.03.2018 and the penalty of Rs.65,61,479/- was levied.

5. The assessee has challenged the said order before the Id. CIT(A) on the ground that the assessee was not given opportunity of being heard. The Id. CIT(A) confirmed the penalty levied by the A.O. on the ground that the assessee has failed to furnish the documents to substantiate his contention inspite of several opportunities.

6. The assessee is in appeal before us, challenging the impugned order.

7. The learned Authorised Representative (Id. AR for short) for the assessee contended that the assessee was not given sufficient opportunity before the Id. CIT(A) and further contended that the penalty order was levied for concealment of income and that the assessee had made wrong claim bogus expenses by way of bogus purchases, foreign travel, cash deposit and depreciation of home theatre. The Id. AR further stated that the impugned show cause notice dated 30.03.2013 was invalid for the reason that the A.O. has failed to strike out inappropriate limb u/s. 271(1)(c) of the Act. The Id. AR relied on the decision of the Hon'ble Jurisdictional High Court in the case of *Mohd. Farhan A. Shaikh v. ACIT* [2021] 125 taxmann.com 253 (Bom).

8. The learned Departmental Representative (Id. DR for short) for the Revenue had nothing to controvert on the said fact.

9. Having heard the rival submissions and perused the materials on record. It is evident that the impugned show cause notice dated 30.03.2013 issued to the assessee by the A.O., it is observed that the A.O. has failed to strike out the irrelevant limb, i.e., whether 'concealment of particulars of income' or 'furnished inaccurate particulars'. The A.O. is said to have issued the impugned notice mechanically without following the mandatory criteria of the statutory provision. It is observed that the notice issued to the A.O. must specify whether the A.O. has levied penalty for concealment of particulars of income or for furnishing of inaccurate particulars of income precisely. It is a settled position that non striking of inapplicable limb vitiates the penalty proceedings. Though the assessee has not raised this issue as a ground of appeal, the Id. AR for the assessee relied on the said legal ground during the appellate proceeding. It is pertinent to point out that it is a settled proposition of law where various courts have taken the view that the non striking of the irrelevant limbs tantamount to the deletion of levy of penalty u/s. 271(1)(c) of the Act. The Hon'ble High Court in *Mohd. Farhan A. Shaikh* (supra) has held that the non striking of irrelevant limb u/s. 271(1)(c) of the Act as to whether it was for concealment of particulars of income or furnishing of inaccurate particulars would vitiate the penalty proceedings.

10. By respectfully, following the above said decision, we are of the considered opinion that the penalty levied by the A.O. and confirmed by the Id. CIT(A) ought to be deleted on the legal ground. As these issues has been decided on this ground it is not necessary to adjudicate the same on merits of the case.

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

Order pronounced in the open court on 31.03.2023

Sd/-

Sd/-

(B. R. Baskaran)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 31.03.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai