

IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI
BEFORE SHIR PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL ACCOUNTANT MEMBER

ITA No. 42/Mum/2023

(A.Y: 2012-13)

Jitendra Babulal Shah (HUF) 257-263 Shanti Sadan, D B Marg, Mumbai-400007	Vs.	ITO – 19(2)(1) Matru Mandir, Tardevo Road, Mumbai-400007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABHJ9591E		
Appellant	..	Respondent

Appellant by :	Mr.Mayank Kothari.AR
Respondent by :	Ms.Vranda U Matkari.DR

Date of Hearing	27.02.2023
Date of Pronouncement	28.02.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi /CIT(A) passed u/s 271(1)(c) and 250 of the Act. The assessee has raised the grounds of appeal as under:

1(a) The learned Assessing Officer has erred in law and on facts in not referring the specific limb of section 271(1)(c) for levy of penalty and therefore the notice issued by the Assessing Officer itself is bad in law and

accordingly the order of levying the penalty is also bad in law and require to be quashed as held by various judicial authorities including Bombay High Court in the case of CIT V/s. Samson Perinchery.

(b) The learned Assessing Officer has erred in law in levying the penalty of Rs.3,58,273/- u/s 271(1)(c) of Income Tax Act, 1961 without properly considering the facts of the case and reply made in proper prospective. Your appellant craves leave to add, alter, and/ or amend the above ground of appeal.

2. The brief facts of the case are that the assessee is engaged in the business of export of readymade garments. The assessee has filed the return of income for the A.Y 2012-13 on 04.03.2012 disclosing a total income of Rs.8,94,764/- and the return of income was processed u/s 143(1) of the Act. Subsequently the notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. The AO on perusal of the financial statements found that the assessee has offered net income of Rs.8,62,401/-. The AO has called for the details of interest received and interest paid. The assessee has filed the details vide letter dated 27.12.2014 referred at Para 5.1 and 5.2 of the

assessment order. The AO has dealt on the facts and details and the explanations in respect of loans and advances and the assessee has filed detailed submissions on 27.12.2014 referred at Para 5.1 of the order. Finally the AO has disallowed the claim of interest expenditure of Rs.43,84,686/- and assessed the total income of Rs.52,79,450/- and passed order u/s 143(3) of the Act dated 02.03.2015.

3. Subsequently, the AO has initiated penalty proceedings u/s 271(1)(c) of the Act, whereas in the penalty proceedings the assessee was issued show cause notice and the assessee has filed the detailed explanations referred at Page 1 Para 2 in respect of the accrual of income, facts and findings of the assessment order but the AO was not satisfied with the explanations and levied a penalty of Rs.3,58,273/- and passed the order u/s 271(1)(c) of the Act dated 22-12-2021.

4. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A). In the appellate proceedings, the CIT(A) has considered the grounds of appeal, submissions and has confirmed the penalty

levied by the A.O and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR of the assessee submitted that the assessee has cooperated in submitting the information with the A.O. Further the notice issued for levy of penalty is invalid and relied on the judicial decisions and prayed for allowing the appeal. Contra, the Ld. DR submitted that the CIT(A) has rightly confirmed the levy of penalty and the technicalities raised by the assessee are devoid of merits and supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue is that the assessee has challenged the levy of penalty on legal issue as the A.O. has not applied his mind and non striking of charge in the penalty notice i.e. whether the charge is for concealment of income or furnishing of inaccurate particulars of income. The Ld.AR demonstrated the copy of penalty notice dated 2-03-2015 and the submissions are realistic. We find the Jurisdictional Honble High Court of Bombay in

Mohd Farhan A Shaikh Vs. DCIT in Tax Appeal No. 51 to 57 of 2012 dated 11.03.202 (2021) 125 .taxmann. com 253 /434 ITR 1 (Bombay) has dealt on this disputed issue of not striking off charge in the penalty notice would vitiate the penalty proceedings. The Hon'ble High Court has made observations at page 56 as under;

180. One course of before us is curing a defect in the notice by referring to the assessment order, which may or not contain reason for the penalty proceedings. The other course of action is the prevention of defect in the notice – and that prevention takes just a tick mark. Prudence demands prevention is better than cure.

Answers:

Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Sec. 271(1)(c), does a mere defect in the notice – not striking off the irrelevant matter vitiate the penalty proceedings?

181. It does. The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the assessee. But that translates into action only through the statutory notice under Sec. 271(1)(c), r.w.s. 274 of the Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings

culminate under a deferent statutory scheme that remains distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.

182. More Particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee's favour.

7. We have considered the facts, circumstances and ratio of the decision of Honble High Court and are of the view that in the present case the A.O has not strike off the charge for levy of penalty for concealment of income or for furnishing of inaccurate particulars of income. Accordingly, we set aside the order of the CIT(A) and quash the penalty notice. And allow the grounds of appeal in favour of the assessee.

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

Order pronounced in the open court on 28.02.2023.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 28.02.2023

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//()

(Asst. Registrar)
ITAT, Mumbai