

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)

ITA No. 32/MUM/2023
Assessment Year: 2011-12

Shri Sanjaykumar Babulal Jain,
28, Kewal Industries Estate, SB
Marg, Lower Parel (W),
Mumbai-400013.

PAN No. AEFPJ 7802 Q
Appellant

DCIT, CC-6(3),
19th floor, Air India
Vs. Building, Nariman Point,
Mumbai-400021.

Respondent

Assessee by : Mr. Karan Jain, AR
Revenue by : Mr. A.S. Sant, DR

Date of Hearing : 19/04/2023
Date of pronouncement : 26/04/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 29.11.2022 passed by the Ld. Commissioner of Income-tax (Appeals)-54, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2011-12, raising following grounds:

On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the penalty levied u/s 271(1)(c) of the IT Act of Rs.75,860/- by the Ld. AO and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.



2. Before us, the Ld. Counsel of the assessee has filed an application of the assessee seeking admission of the additional ground. The relevant ground is reproduced as under:

"On the facts and in the circumstances of the case and in law, the notice dated 28.03.2014 issued to the appellant without indicating that there was concealment of particulars of income or furnishing of incorrect particulars of such income will vitiate the penalty notice and subsequent proceedings and hence the same is invalid and illegal"

3. The additional ground raised by the assessee being purely of legal in nature and no investigation of the fresh facts is required therefore, same was admitted for adjudication in view of the decision of the Hon'ble Supreme Court in the case of **NTPC Ltd. 229 ITR 83 (SC)**.

4. Briefly stated, facts of the case are that in the assessment completed u/s 143(3) r.w.s. 153A of the Act on 21.12.2016, certain additions were made to the returned income and penalty u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') was initiated.

5. On further appeal against quantum addition, the Ld. CIT(A) sustained addition of Rs.2,23,172/- and deleted the balance additions made by the Assessing Officer. Accordingly, the Ld. Assessing Officer after giving opportunity of being heard, levied penalty of Rs.75,857/- vide his order dated 26.03.2019.



6. Aggrieved, the assessee is by way of raising ground and additional ground as reproduced above.

7. Before us, the assessee has filed a paper book containing pages 1 to 71 and in support of additional ground submitted that in the notice issued for initiating penalty u/s 271(1)(c) of the Act before 28.03.2014, the relevant limb for initiating the penalty i.e. either concealment or furnishing of inaccurate particulars, was not indicated by the Assessing officer. He also referred to the assessment order and submitted that in the assessment order also the Assessing Officer has not specified whether the penalty has been initiated for concealment of income or for furnishing inaccurate particulars of the income. In the circumstances in view of the decision of the Hon'ble Jurisdictional High Court in the case of **Mohd. Farhan A. Shaikh v. DCIT Central Circle 1 in [2021] 434 ITR 1 (Bombay)**, the penalty levied is bad in law and therefore, liable to be quashed.

8. On the other hand, the Ld. Departmental Representative (DR) relied on the order of the lower authorities.

9. We have heard rival submission of the parties on the issue-in-dispute of the additional ground raised. We find that penalty proceedings have been initiated in the case of the assessee without specifying the charges in the notice , whether it was for concealment of the income or furnishing of inaccurate particulars of



the income. Even charges for initiating penalty have not been specified in the assessment order. The Hon'ble Bombay High Court in the case of **Mohd. Farhan A. Shaikh v. DCIT Central Circle 1 (supra)** has held that in such cases of not specifying the charges, the penalty u/s 271(1)(c) of the Act cannot be sustained. The relevant finding of the Hon'ble Bombay High Court (supra) is reproduced as under:

“178. Therefore, in every instance, it is a question of inference whether the assessment order contained any grounds for initiating the penalty proceedings. Then, whenever the notice is vague or imprecise, the assessee assails it as bad; the Revenue defends it by saying that the assessment order contains the precise charge. Thus, it becomes a matter of adjudication, opening litigious floodgates. The solution is a tick mark in the printed notice the Revenue is used to serving on the assesseees.

179. Besides, the prima facie opinion in the assessment order need not always translate into actual penalty proceedings. These proceedings, in fact, commence with the statutory notice under section 271(1)(c) read with section 274. Again, whether this prima facie opinion is sufficient to inform the assessee about the precise charge for the penalty is a matter of inference and, thus, a matter of litigation and adjudication. The solution, again, is a tick mark; it avoids litigation arising out of uncertainty.

180. One course of action before us is curing a defect in the notice by referring to the assessment order, which may or may not contain reasons 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 Section 271(l)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitiates 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 section 271(1)(c), read with section 274 of IT 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 different 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.

183. Therefore, we answer the first question to the effect that Goa Dourado Promotions and other cases have adopted an approach more in consonance with the statutory scheme. That means we must hold that Kaushalya does not lay down the correct proposition of law.

.....”

9.1 Respectfully following the finding of the Hon'ble Jurisdictional High Court, the penalty proceedings initiated are held to invalid and therefore same is cancelled. The order of the Ld. CIT(A) on the issue-in-dispute is set aside. The additional ground of appeal of the assessee is accordingly allowed.



9.2 Since we have already cancelled the penalty, therefore, we are not required to adjudicate upon the grounds raised by the assessee.

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

Order pronounced in the open Court on 26/04/2023.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 26/04/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai