

| आयकर अपीलीय अधिकरण न्यायपीठ, "गुवाहाटी"|
IN THE INCOME TAX APPELLATE TRIBUNAL
"GUWAHATI" BENCH, GUWAHATI
{Heard through virtual hearing mode from ITAT Kolkata, Benches}
BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 117/GTY/2020
Assessment Year: 2016-17

Arunachal Police Housing & Welfare Corp. Ltd. Police Headquarters P.O. - R.K. Mission Itanagar Dist. - Papum Pare Arunachal Pradesh - 791113 [PAN : AAFC6808G]	Vs	Income Tax Officer Ward - Itanagar
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Assessee by :	Shri Sanjay Mody, FCA
Revenue by :	Shri N.T. Sherpa, JCIT, D/R

सुनवाई की तारीख/Date of Hearing : 03/04/2023
घोषणा की तारीख /Date of Pronouncement: 25/04/2023

आदेश/ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals) – Guwahati - 1, (hereinafter the "Id. CIT(A)") dated 03/03/2020 for Assessment Year 2016-17 against the penalty order passed u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') passed by Income Tax Officer, Ward- Itanagar, dated 28/06/2019.

2. The sole ground raised by assessee in this appeal is in respect of penalty imposed u/s 271(1)(c) of Rs.2,08,48,278/-. Brief facts of the case are that assessee is a Govt. of Arunachal Pradesh enterprise engaged in the business of construction of houses for the police department and other government corporations which claimed

exemption under section 10(26B) of the Act. Hon'ble Guwahati High Court vide order dated 14/02/2019 in ITA no. 231/2017 in the case of assessee for Assessment Year 2009-10 and 2010-11 dismissed the appeal of the assessee by disallowing the exemption claimed under section 10(26B) of the Act.

2.1. Assessee filed its return of income on 21/03/2018 in which also exemption was claimed under section 10(26B). Assessment was completed on 12/12/2018 by disallowing the exemption claimed under section 10(26B). Assessee paid the demand raised thereon of Rs.45,27,145/-.

2.2. Penalty proceedings were subsequently initiated by issuing notice u/s 274 rws 271(1)(c) of the Act, dated 12/12/2018. Penalty of Rs. 2,08,48,278/- was imposed by passing the impugned order under section 271(1)(c), dated 28/06/2019.

3. Before us, assessee has taken an additional ground vide letter dt. 19/10/2022, and prayed for its admission.

“For that the Hon'ble CIT(Appeals) erred in confirming the order of Penalty passed u/s 271(1)(c) which was beyond the jurisdiction of the Assessing Officer, and hence needs to be struck down.”

3.1. Ld. Counsel for the assessee submitted that additional ground is purely a question of law and goes to the root of the matter with all the relevant facts already on record. While raising this additional ground to contest on the assumption of jurisdiction by the ld. Assessing Officer, ld. Counsel for assessee pointed out that Section 271(1)(c) of the Act, specifically requires recording of satisfaction for initiation of penalty which has to be *“in the course of any proceedings under the Act”*. According to ld. Counsel for assessee, ld. Assessing

Officer has not recorded any satisfaction in the assessment order passed u/s 143(3) of the Act, dt. 12/12/2018. Based on these facts, ld. Counsel prayed for admission of additional ground and its adjudication. Tribunal after considering the aforesaid ground and after hearing the ld. Representatives of the parties, admitted the additional ground of appeal taken by the assessee for its adjudication.

3.2. Ld. Counsel for assessee invited attention of the Bench to the said assessment order to demonstrate that there is no recording of any satisfaction or even a direction to initiate penalty proceedings under section 271(1)(c). Without recording any satisfaction for initiation of impugned proceedings, the assessment was completed and there was no proceeding which was pending under the Act. Thereafter, ld. Assessing Officer issued a notice u/s 274 r.w.s. 271(1)(c) of the Act dt. 12/12/2018 stating that “*whereas in the course of proceedings before me for Assessment Year 2017-18, it appears to me that you have concealed the particulars of income and furnished inaccurate particulars of such income*”.

4. In this respect, ld. Counsel for assessee submitted that there is no such notation or recording of any observation in the course of assessment proceeding by ld. Assessing Officer in the assessment order and, therefore, such an observation in the notice for initiating penalty proceedings is grossly incorrect.

4.1. Further, ld. Counsel for assessee referred to para 4 of the impugned order of penalty to again point out that ld. Assessing Officer has recorded an incorrect fact that penalty proceedings were initiated during the assessment proceedings. Thus, ld. Counsel

asserted that there are no directions contained in the assessment order for initiation of penalty and as such there was no satisfaction of ld. Assessing Officer for initiating the penalty proceedings. Accordingly, ld. Assessing Officer has wrongly assumed jurisdiction and imposed a penalty of Rs. 2,08,48,278/-. In this respect, para 4 from the impugned order of penalty is reproduced as under:

“4. Penal proceedings u/s 271(1)(c) were also initiated during assessment proceedings for furnishing inaccurate particulars of income and penalty notice u/s 271(1)(c) of the Income Tax Act, 1961 was issued and served to the assessee fixing the date of hearing on 03/01/2019 at 11:30 AM. However, no response was received from the assessee.”

4.2. Ld. Counsel also referred to provisions of Section 271(1) of the Act, and submitted that sub-section very categorically mentions about Assessing Officer having satisfaction *“in the course of any proceedings under this Act”* which in the present facts of the case, no proceeding was pending for the assessee. Relevant portion of the section is reproduced as under:-

“271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—”

4.3. Ld. Counsel also referred to the deeming provision of section 271(1B) to point out that *“any direction for initiation of penalty proceedings under section 271(1)(c)”* in the order of assessment also does not meet the compliance requirement in the present case.

5. To buttress his contentions, reliance was placed on the decision of Hon’ble High Court of Andhra Pradesh in the case of *CIT vs. Lotus Constructions (2015) 370 ITR 475 (AP)*, which has held that Tribunal was justified in cancelling the penalty on the ground that there was no endorsement in the order of assessment to the effect that penalty u/s 271(1)(c) of the Act would be initiated. Relevant paragraph from the said order is reproduced as under:-

“11. One of the important grounds that appealed to the Commissioner as well as the Tribunal was that there was no endorsement in the order of assessment, dated 30.09.1996, to the effect that the penalty proceedings under Section 271 (c) of the Act would be initiated. The effect of failure to mention that was discussed with reference to the decided cases and the very provision of law.

12. Basically Section 271(1) itself indicates that the satisfaction or decision to initiate proceedings must arise in the course of the proceedings. Added to that, sub-Section (1) (b) of Section 271 of the Act mandates that the intention or satisfaction to initiate proceedings must be evident from the order of assessment itself, meaning thereby that such satisfaction need not be supported with other reasons. In Chennakesava Pharmaceuticals case (supra), this Court held that absence of any mention in the order of assessment that proceedings under Section 271 (c) would be initiated makes the initiation of such proceedings, untenable.

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15. Much emphasis is laid on the last words viz., or reduce it into writing and asserted that the satisfaction need not be in writing at all. However, they must be read in the context of entire sentence, and not in isolation. If so done, the conclusion would be that the nature of satisfaction need not be in writing, though the factum of satisfaction must be in writing. The Tribunal has taken the correct view of the matter and we are not inclined to interfere with the same.”

5.1. He also placed reliance on the decision of Hon’ble Delhi High Court in the case *CIT vs. Rampur Engineering Co. Ltd. & Ors. (2009) 309 ITR 143 (Del.)*, which held as under:-

“We hasten to add that pending reference, sub-section (1B) has been inserted in section 271 of the Income-tax Act by Finance Act, 2008. The said provision purports to create a fiction by which satisfaction of the Assessing Officer is deemed to have been recorded in cases where an addition or disallowance is made by the Assessing Officer and a direction for initiation of penalty proceedings is issued. The said provision is made effective retrospectively with effect from 1-4-1989. In some of the cases forming part of this batch, the assessment orders were passed after 1-4-1989. This reference is being answered only in respect of the cases where assessment orders were made prior to 1-4-1989.

Learned counsel appearing for the revenue strenuously contended that the question whether the authority was or was not satisfied about any concealment or furnishing of inaccurate particulars will depend upon the facts of each case and the order which the authority has made will have to be seen as a whole and so long as a proper reading of the order demonstrates application of mind by the authority and so long as satisfaction is discernible from the finding recorded by the authority initiating the proceeding, the same should suffice. Learned counsel contended that if on the facts available on record a clear case of concealment of income was made out then the Tribunal would not be justified in deleting the penalty. According to the learned counsel all such

relevant facts available on record will have to be kept in view by the Tribunal in deciding the question as to whether the Assessing Officer has applied his mind to the question of concealment of income or furnishing of inaccurate particulars of any such income.

On the other hand, learned counsel appearing for the assessee submitted that the satisfaction as to the assessee having concealed the particulars of his income or furnished inaccurate particulars of such income is to be arrived at by the Assessing Officer during the course of any proceedings under the Act, which would mean the assessment proceedings, without which the very jurisdiction to initiate the penalty proceeding is not conferred on the Assessing Officer by reference to clause (c) of sub-section (1) of section 271 of the Income-tax Act. Learned counsel submitted that what actually prevailed with the Tribunal is the absence of any finding recorded by the Assessing Officer in the order of the assessment conferring jurisdiction for initiation of penalty proceedings. According to the learned counsel the decision of this Court in Ram Commercial Enterprises Ltd.'s case (supra) laid down the correct position of law.

In our opinion, the legal position is well-settled in view of the Supreme Court decisions in S.V. Angidi Chettiar's case (supra) and D.M. Manasvi's case (supra), that power to impose penalty under section 271 of the Act depends upon the satisfaction of the Income-tax Officer in the course of the proceedings under the Act. It cannot be exercised if he is not satisfied and has not recorded his satisfaction about the existence of the conditions specified in clauses (a), (b) and (c) before the proceedings are concluded. It is true that mere absence of the words 'I am satisfied' may not be fatal but such a satisfaction must be spelt out from the order of the Assessing Authority as to the concealment of income or deliberately furnishing inaccurate particulars. In the absence of a clear finding as to the concealment of income or deliberately furnishing inaccurate particulars, the initiation of penalty proceedings will be without jurisdiction. In our opinion, the law is correctly laid down in Ram Commercial Enterprises Ltd.'s case (supra) and we are in respectful agreement with the same. The reference is answered accordingly."

6. On a specific query to ld. Sr. D/R by the Bench on the recording of any satisfaction or any direction in the body of assessment order by the ld. AO, he sought time to review the records and make his submission. The case was re-fixed from 3rd April to 5th April 2023 on specific request of ld. Sr. D/R who fairly accepted that there is no recording of any satisfaction for initiation of penalty proceedings under section 271(1)(c), in the body of the assessment order.

6.1. On going through the assessment order, we note that nowhere has the ld. AO noted in the assessment order, his satisfaction that there was either concealment of income by the assessee or that the assessee had furnished inaccurate particulars in his return of income and that there is a case made out for initiating proceedings under section 271(1) (c) of the Act. Therefore, we are of the view that initiation of proceedings under section 271(1)(c) against the assessee is not valid in law and the penalty imposed thereafter is not sustainable and liable to be quashed.

7. Accordingly, under the facts and circumstances of the case and considering the judicial precedent referred above and submissions made by ld. Sr. D/R, we find it proper to delete the penalty imposed by ld. Assessing Officer u/s 271(1)(c) of the Act. Accordingly, additional ground taken by the assessee is allowed.

7.1. Since we have adjudicated on the additional ground holding it in favor of the assessee by quashing the impugned penalty order, grounds taken by the assessee in the memo of appeal in Form 36 are not adjudicated upon.

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

Order pronounced in the Court on 25 April, 2023 at Kolkata.

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Kolkata, Dated 25/04/2023

SC S.P.

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

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

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata