

**IN THE INCOME TAX APPELLATE TRIBUNAL, GUWAHATI BENCH, GUWAHATI**

**BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA Nos.51 & 52/GTY/2021  
Assessment Year: 2012-13 & 2013-14**

Jay Kishan Mandal		ITO, Ward-1, Nagaon
C/o. Rahul Raj Jain & Co., H. No. 15, 1 <sup>st</sup> Floor, Bye Lane-2, Shaktigarh Path, Bhangagarh, G.S. Road, Assam-781005.	vs	
<b>PAN: AJUPM 6794 L</b>		
(Appellant)		(Respondent)

**Present for:**

Appellant by : None

Respondent by : Shri N.T. Sherpa, JCIT

Date of Hearing : 16.05.2023

Date of Pronouncement : 25.05.2023

**ORDER**

**PER SONJOY SARMA, JM:**

The captioned appeals are filed by the assessee against two separate orders of Id. CIT(A), NFAC both dated 26.08.2021 in respect of assessment year 2012-13 and 2013-14 respectively. The assessee has raised common grounds of appeal for each of the assessment years under consideration:

*"i. That the Id. CIT(Appeals) was not justified while confirming the penalty imposed u/s 271(1)(c) of the Income Tax Act, 1961.*

*ii. That the appellant prays leave to add, amend, alter, delete or forego any of the grounds either before or during the course of hearing."*

2. Brief facts of the case are that the assessee has filed original return of income on 29.03.2014 by declaring income of Rs. 7,08,320/- and also assessee has claimed refund of Rs. 75,874/-. The assessment of the assessee was completed u/s 144/147 on 15.12.2016 by determining total income of Rs. 8,69,450/-. During

the assessment proceeding, the ld. AO asked the assessee to explain the reasons for difference of salary income as per original return of income filed by the assessee and return filed in response to notice u/s 148 of the Act. In response to such query made by the AO, the assessee submitted that the income filed by him was due to mistake in taking salary income correctly and he surrendered the difference amount for taxation. The Assessing Officer has also initiated penalty proceedings u/s 271(1)(c) of the Act and imposed penalty of Rs. 40,346/- on the assessee vide penalty order dated 29.06.2017. Aggrieved by the penalty order, assessee had filed an appeal before the ld. CIT(A). However, the assessee could not succeed before the ld. CIT(A) and the ld. CIT(A) upheld the order passed by the ld. AO.

3. Dissatisfied with the above order, assessee preferred an appeal before the Tribunal.

4. At the time of hearing, none appeared on behalf of the assessee. Although notices issued upon the assessee, therefore, we have no other alternative but to decide the appeal on the merits of the case with the assistance of ld. DR and material available on record.

5. We after perusal of the material available on record. We noticed that the ld. AO issued a penalty notice upon the assessee, however doing so he has not satisfied the charges towards either concealment or filing inaccurate particulars of income by the assessee. On similar issue, the Hon'ble Bombay High Court has

held in the case of Ganga Iron & Steel Trading Co. vs. CIT (2022) taxmann.com 244 (Bombay) dated 22.12.2021 as under:

*Quote, "10. We find that the law as laid down by the Full Bench applies on all fours to the facts of the present case as in the show cause notice dated 12-2-2008, the Assistant Commissioner of Income-tax is not clear as to whether there was concealment of particulars of income or that the Assessee had furnished inaccurate particulars of income. We therefore find that issuance of such show cause notice without specifying as to whether the Assessee had concealed particulars of his income or had furnished inaccurate particulars of the same has resulted in vitiating the show cause notice. Heavy reliance was placed by the learned counsel for the Revenue on the decision in Mak Data (P.) Ltd. (supra) to urge that the penalty contemplated by section 271 (1) (c) of the said Act was in the nature of civil liability and mens rea was not essential therein. The decision in Dilip N. Shroff (supra) having been held as not laying down good law in Dharmendra Textile Processors Ltd. (supra), it was submitted that the show cause notice issued in the present proceedings was liable to be upheld. It may be noted that all the decisions relied upon by the learned counsel for the Revenue were considered by the Full Bench while answering the issues referred to it on reference. The Full Bench having considered these decisions and having answered the question as regards defect in the notice under section 271(1)(c) of the said Act resulting in vitiating the penalty proceedings, we find ourselves bound by the answers given by the Full Bench. It would not be permissible for us to disregard this aspect and take a different view of the matter. Accordingly substantial question of law no. III is answered by holding that since the show cause notice dated 12-2-2008 does not indicate whether there was concealment of particulars of income or furnishing of incorrect particulars of such income, the same would vitiate the penalty proceedings." Unquote.*

6. In the case under consideration inappropriate words have not been struck out in the penalty notice, by the AO. Therefore, respectfully following Hon'ble Bombay High Court, it is held that the penalty u/s.271(1)(c) is not maintainable. Hence, the Assessing Officer is directed to delete the penalty u/s.271(1)(c). Accordingly, grounds of appeal raised by the Assessee are allowed.

7. Since we allow the appeal filed by the assessee challenging the impugned order passed by the ld. CIT(A) in ITA No. 51/Gau/2021 and the reasons stated above, our decision shall mutantis mutandis apply to the other appeal being ITA No. 52/Gau/2021 as well and consequently the same is also allowed.

8. In the result, both the appeals of the assessee are allowed.

**Order pronounced in the open court on 25.05.2023**

**Sd/-**

**Sd/-**

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

**(SONJOY SARMA)**  
**JUDICIAL MEMBER**

Kolkata: 25.05.2023  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Jay Kishan Mandal.
2. The Respondent: ITO, Ward-1, Nagaon.
3. The CIT,
4. The CIT (A)
5. The DR .

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata