

**IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI**

**SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 857/MUM/2023
(Assessment Year: 2010-11)**

Tirupati Reddy Mukku,

Shop No. 2, Plot No. 9,
Lalsharan CHSL, Near Nityanand Baug CHSL,
Chembur Colony, Mumbai - 400074
[PAN: AJUPM2928A]

..... **Appellant**

**Deputy Commissioner of Income Tax,
27(3), Mumbai**

Vashi, Navi Mumbai - 400705

Vs

..... **Respondent**

Appearance

For the Appellant/Appellant : Shri Nikhil Natekar
For the Respondent/Department : Ms. Richa Gulati

Date : 06.06.2023
Conclusion of hearing : 23.06.2023
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 25/01/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2010-11, whereby the Ld. CIT(A) had dismissed the appeal against the penalty order, dated 28/05/2014, passed under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:
 - "1 *The learned CIT(appeals) was incorrect and unjustified in holding that penalty for concealment rightly levied by the Assessing Officer even when notice is issued without clearly specifying the*

reasons for levying penalty, i.e. for concealment of particulars of income or furnishing inaccurate particulars of income. The notice is issued in stereotyped manner and hence notice is vague and bad in law.

2. *The learned assessing officer erred imposing penalty u/s 271(1)(c) without properly recording the reasons to levy penalty in the assessment order and there is no clear-cut finding and crystallized charge being conveyed by the learned officer and hence liable to be struck down."*
3. The facts in brief are that the Appellant, proprietor of M/s Tirumala Construction engaged in the work of civil constructions and management of telecom turnkey project, filed return of income for the Assessment Year 2010-11 on 09/10/2010 declaring total income of INR 95,18,780/-. The original return filed by the Appellant was processes under Section 143(1) of the Act.
4. A survey was conducted under Section 133A of the Act in the case of the Appellant as well as some sister concerns on 03/01/2013 wherein some discrepancies were found in the bills/delivery challans of purchases made from some of the parties listed as hawala operators on the website of Sales Tax Department, Government of Maharashtra. During the course of survey, the Appellant offered to tax additional income of INR 2,30,96,506/- being aggregate purchases made from the aforesaid parties during the relevant previous year.
5. Subsequently, reassessment proceedings were initiated against the Appellant and notice under Section 148 of the Act was issued on 18/12/2013. In response, the Appellant filed revised return of income on 30/03/2013 declaring additional income of INR 2,30,96,506/- in respect of alleged bogus purchases. The Assessing Officer completed the reassessment proceedings under Section 147 read with Section 143(3) of the Act vide order, dated 28/11/2013,

accepting the returned income of INR 3,26,15,290/-, (which included additional income of INR 2,30,96,506/-), as the assessed income.

6. The Assessing Officer also recorded satisfaction for initiating penalty proceedings under Section 271(1)(c) of the Act and initiated penalty proceedings by issuance of notice dated 28/11/2013. During the penalty proceedings, the Appellant filed reply dated 07/05/2017 wherein it was stated by the Appellant that the Appellant has been maintaining requisite books of accounts along with supporting bills and vouchers. After getting knowledge that some of the parties from which purchases were made by the Appellant were listed on the website of Maharashtra Sales Tax Department as hawala operators, the Appellant filed revised return and offered to tax the additional income of INR 2,30,96,506/- to avoid endless litigation and to buy peace. According to the Appellant, there was neither concealment of particulars of income nor furnishing of inaccurate particulars of income by the Appellant. However, the Assessing Officer was not convinced and vide penalty order, dated 28/05/2014, passed under Section 271(1)(c) of the Act levied penalty of INR 76,42,630/-, being 100% of tax sought to be evaded on the additional income of INR 2,30,96,506/- disclosed by the Appellant.
7. The Appellant challenged the penalty order, dated 28/05/2014, before CIT(A). However, the CIT(A) dismissed the appeal vide order, dated 25/01/2013.
8. Being aggrieved, the Appellant has preferred the present appeal.
9. We have heard the rival submissions, perused the material on record and considered the legal position. Section 271(1)(c) of the Act provides for levy of penalty where Assessing Officer is satisfied that

any person has (i) concealed particulars of income or (ii) furnished inaccurate particulars of such income.

10. We note that in the assessment order the Assessing Officer has recorded his satisfaction in the following manner:

"4. As the Appellant has returned the income declared during the survey proceedings only after the material collected during the survey proceedings and the same were confronted to the Appellant during the course of survey proceedings, penalty proceedings under Section 271(1)(c) of the Act for concealment and furnishing of inaccurate particulars of income in respect of income chargeable to tax, are initiated." (Emphasis Supplied)

11. However, a perusal of penalty notice dated 28/11/2013, issued under Section 274 read with Section 271 of the Act would show that the aforesaid penalty notice is in the nature of an omnibus show cause notice which has been issued without deleting or striking off the inapplicable part.

12. During the course of hearing, the Learned Departmental Representative supported the action of the Assessing Officer by submitting that in the present case the Assessing Officer had initiated penalty for, both, concealment of particulars of income as well as for furnishing of inaccurate particulars of income. The Assessing Officer had, while recording satisfaction in the assessment order, dated 28/11/2013, as well as while levying penalty, vide penalty order, dated 28/05/2014, concluded that the Appellant had concealed income and furnished inaccurate particulars of income. In this regard, reliance was placed by the Ld. Departmental Representative on paragraph 7 of the penalty order, dated 28/05/2014, which reads as under:

"7. In view of discussions at Para 6 above, it is crystal clear that the Appellant furnished inaccurate particulars of income while filing

returns of income. The Appellant has also concealed the particulars of income by way of bogus claim of expenditure. Hence, I am of the view that it is a fit case for imposition of penalty under section 271(1)(c) of the Act. As per the provisions of section 271(1)(c) of the IT Act 1961, the minimum penalty and maximum penalty amount are 100% and 300% of the tax sought to be evaded respectively." (Emphasis Supplied)

13. However, in our view, the aforesaid submissions of the Ld. Departmental Representative do not advance the case of the Revenue in view of the fact that the full Bench of the Hon'ble Bombay High Court has, in the case of **Mohd. Farhan A Shaikh Vs DCIT, Central Circle-1, Belgaum : 434 ITR 1 (Bombay)**, held as under:

"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(1)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitiating 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 Appellant. 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 Appellant must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness." (Emphasis supplied)

Thus, in the above judgment, the Hon'ble Bombay High Court has held that a person against whom penalty proceedings have been initiated under Section 271(1)(c) of the Act must be informed of the

grounds of penalty proceedings only through statutory notice and an omnibus notice suffers from the vice of vagueness and is, therefore, not sustainable in law.

14. In the present case the penalty notice, dated 28/11/2013 issued under Section 274 read with Section 271 of the Act is defective as it does not inform the Appellant the grounds of penalty proceedings to the Appellant. Contrary to what has been contended by the Learned Departmental Representative, the penalty notice does not state that the penalty proceedings are being initiated under both the limbs. The notice issued is in standard format and provides that the Appellant has 'concealment of particulars income or furnished inaccurate particulars of such income' as opposed to 'concealment of particulars of income **and** furnished inaccurate particulars of such income'. Since in the present case the correct charge/grounds of penalty proceedings has not been communicated to the Appellant through statutory notice, the penalty proceedings stand vitiated as per the above judgment of the Hon'ble Bombay High Court and therefore, the penalty of INR 76,42,630/- levied under Section 271(1)(c) of the Act is deleted. Thus, Ground No. 1 raised by the Appellant is allowed and Ground No. 2 is disposed of as being infructuous.
15. In result, the present appeal preferred by the Assessee is allowed.

Order pronounced on 23.06.2023.

Sd/-
(S. Rifaur Rahman)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 23.06.2023
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
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