IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 216/Srt/2023 (Assessment Year 2013-14)
(Physical hearing)

Ruchit Dineshbhai Doshi, C-10, 5/6, Somakanji Estate-2, Opp-Sanidev Mandir, Magdalla BO, Surat-395007 (Gujarat) **PAN No. AFXPD 4008 F**	Vs.	I.T.O., Ward-2(2)(1), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Mehul Shah, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of Appeal	28/03/2023
Date of hearing	31/05/2023
Date of pronouncement	25/07/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals) [in short, the ld. CIT(A)] dated 06/02/2023 for the Assessment Year (AY) 2013-14 wherein the assessee has raised following grounds of appeal.

   "1. On the facts and circumstances of the case as well as law on the subject, the ld. CIT(A) has erred in confirming the addition made by assessing officer in levying penalty of Rs. 1,01,410/- u/s 271(1)(c) of the I.T. Act, 1961.
   2. It is therefore, prayed that above penalty levied by the assessing officer may please be deleted.
   3. Appellant craves leave to add, alter or delete any ground(s) either before on in the course of hearing of the appeal."

2. Brief facts of the case are that the assessee is an individual, filed his return of income for A.Y. 2013-14 on 10/05/2019 declaring total

income of Rs. 6,07,720/-. The said return was filed in response to notice under Section 148 of the Income Tax Act, 1961 (in short, the Act) dated 31/03/2019. The case of assessee was reopened on the basis of information of DDIT (Inv.), Ahmedabad wherein it was informed that the assessee was involved in trading of penny stock of scrip namely Dhvanil Chemicals Ltd. earlier known as Shreya Chemicals Ltd. During the assessment, the assessee was required to furnish the details of sale proceed of share scrip of Dhvanil Chemicals Ltd. The assessee contested the show cause notice and filed required details to substantiate the genuineness of his transaction in claiming that he has entered in genuine transaction. However, the reply of assessee was not accepted by Assessing Officer and the Assessing Officer treated the transaction of sale of share as bogus and long term capital gain of Rs. 4,58,954/- was treated as unexplained cash credit under Section 68 of the Act. The assessing officer initiated penalty for concealment of income. No further appeal was filed by assessee against such addition in quantum assessment.

3. The Assessing Officer issued show cause notice under Section 274 r.w.s. 271(1)(c) of the Act vide order dated 27/11/2019 and again on 17/09/2021. The assessee filed his reply dated 25/09/2021. In the reply, the assessee stated that he has already given required details during the assessment. After considering such details, the Assessing Officer passed the assessment order raising demand of Rs. 4500/- vide

demand dated 28/02/2020. The assessee made payment of entire demand and prayed to consider the submission already filed. The reply of assessee was not found satisfactory by the Assessing Officer. The Assessing Officer held that the assessee has concealed the particulars of income, thus it is a fit case for levy of penalty under Section 271(1)(c) of the Act. The Assessing Officer levied the penalty @ 100% of tax sought to be evaded and worked out the penalty of Rs. 1,01,414/- vide order dated 11/01/2022.

4. Aggrieved by the order of penalty, the assessee filed appeal before the ld. CIT(A). Before the ld. CIT(A), the assessee filed detailed written submission. The submission of assessee are recorded in para 5 of order of ld. CIT(A). In the submission, the assessee submitted that he has carried out share transaction in routine as investor from long time. The assessee is active in share investment. During the assessment, the assessee furnished copy of physical shares purchase, contract note of Dhvanil Chemicals Ltd. from Jay investment as on 27/05/2010. Copy of share certificate was attached, the assessee made request for Demat. Copy of Demat transaction was furnished. The assessee also furnished other details about the said of such share and submitted that such documents were sufficient to prove the identity, creditworthiness and genuineness of transaction. All details were submitted before the Assessing Officer. The assessee also relied on a number of decisions to substantiate that his transaction was genuine. The assessee reiterated

that no further appeal was filed in quantum assessment to buy peace and has paid the demand of tax to avoid the litigation. The assessee submitted that even if it is assumed that the assessee was not able to substantiate, the explanation was not considered as non-bonafide and no penalty is leviable. All facts relating to transaction and material fact for determination of total income, was disclosed. To substantiate his contention, the assessee relied on decision of Hon'ble Jurisdictional High Court in National Textiles Vs CIT (2001) 114 Taxman 203 (Guj) and CIT Vs Jalaram Oil Mills (2002) 121 Taxman 682 (Guj). The assessee also relied on various other decisions of non-jurisdictional High Courts. The assessee also contended that the charges in the penalty notice were not clear. To support such submission, the assessee relied on decision of Hon'ble Bombay High Court in CIT Vs Samson Perinchery in Tax Appeal No. 1154 of 2014, decision of Hon'ble Karnataka High Court in CIT Vs Manjunatha Cotton and ginning Factory & ors. 359 ITR 565 (Kar) and prayed to allow his appeal.

5. The ld. CIT(A) after considering the submission of assessee, held that no relief is allowed to the assessee on technical issue as the copy of notice under Section 274 is not furnished. So far as merit of penalty is concerned, the ld. CIT(A) held that the assessee has indulged in transaction of penny stock of Shreya Chemicals earlier known as Dhvanil Chemicals Ltd. which was a penny stock as per information of DDIT (Inv), Ahmedabad. The Assessing Officer in penalty order, held

that explanation of assessee was not satisfactory and that the assessee has taken entry of bogus long term capital gain. Addition of long term capital gain was based on detailed enquiry of Investigation Wing and the assessee has accepted the addition, thus he satisfied that the levy of penalty by Assessing Officer was justified. Further aggrieved, the assessee has filed present appeal before this Tribunal.

6. I have heard the rival submissions of the learned Authorised Representative (ld. AR) of the assessee and the learned Senior Departmental Representative (ld. Sr. DR) for the revenue. The ld. AR of the assessee submits that the assessee furnished complete detail while filing return of income as well as during the assessment proceedings. The case of assessee was reopened on the basis of information provided by the Investigation Wing, Ahmedabad. The Assessing Officer made addition on the basis of information of Investigation Wing. It is admitted fact that the assessee has not filed further appeal and accepted the addition in the quantum assessment. Mere addition in the quantum assessment cannot ipso facto lead to levy of penalty under Section 271(1)(c) of the Act. The assessee has furnished complete details during reassessment. Mere not acceptance of reply, cannot be a ground to levy of penalty. The assessee neither concealed any particular of income nor furnished inaccurate particulars of such income. The Assessing Officer has not specified the specific charge in the show cause notice. The ld. AR of the assessee further submits that mere because addition was

made by the Assessing Officer by invoking provisions of Section 68, the penalty under Section 271(1)(c) of the Act would not follow as a natural corollary when the assessee himself has disclosed all the details. To support such submission, the ld. AR of the assessee relied upon the decision of Hon'ble Jurisdictional High Court in the case of New Sorathia Engineering Co. Vs CIT (2006) 282 ITR 642, CIT Vs Jalaram Oil Mills (2002) 253 ITR 192 (Guj), Bombay High Court in CIT Vs Samson Perinchery (2017) 392 ITR 1 (Bom).

7. On the other, the ld. Sr. DR for the revenue supported the orders of lower authorities. The ld. Sr. DR for the revenue submits that the Assessing Officer while passing the assessment order in para 12 of his order clearly recorded that penalty under Section 271(1)(c) of the Act was initiated for concealment of income. The Assessing Officer while issuing show cause notice dated 27/11/2019 and again on 03/12/2020 also recorded that assessee has concealed the income. Further while levying the penalty under Section 271(1)(c), the Assessing Officer levied penalty for concealment of income. The Assessee was very well aware about the charges against the assessee about concealment of income. The ld. Sr. DR for revenue further submits that the assessee was beneficiary of penny stock of scrip of M/s Shreya Chemicals. The addition in the assessment was not challenged by assessee knowing fully well that the assessee has no case on merit and now taking a plea that the appeal was not filed due to buy peace which is not acceptable.

8. I have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. I have also deliberated on the various case laws relied upon by the ld. AR of the assessee. I find that the Assessing Officer while passing the assessment order, treated the long term capital gain as unexplained credit on the basis of report of Investigation Wing that the assessee transacted in the share of Shreya Chemicals which is a penny stock company. It is an admitted fact that no further appeal was filed by assessee in the quantum assessment. I find that while passing the assessment order, the Assessing Officer initiated penalty for concealment of income. The Assessing Officer before passing the assessment order, issued show cause notice dated 27/11/2019 and 03/12/2019. In both the notices, the Assessing Officer mentioned "*you have concealed the particulars of income or furnished inaccurate particulars of such income*". However, while passing the penalty order dated 11/01/2022, the penalty was levied but no specific charge was referred by the Assessing Officer. The Assessing Officer concluded that "*I am satisfied that it is fit case for levy of penalty under Section 271(1)(c) of the Act*". I find that the Hon'ble Jurisdictional High Court in New Sorathia Engineering Co. Vs CIT (Supra) held that where there was no clear cut finding in the penalty order or the order of CIT(A) whether there was concealment of income or furnishing inaccurate particulars of income, penalty was not sustainable. The Hon'ble High Court also relied on earlier decision of CIT Vs Manu

Engineering Works (1980) 122 ITR 306 (Guj). Thus, in view of the aforesaid factual and legal discussion when there is no specific finding in the penalty order I do not find any justification in upholding the levy of penalty as has been held by the Hon'ble Jurisdictional High Court in New Sorathia Engineering Co. Vs CIT (Supra).

9. Further I find that the Hon'ble Bombay High Court in a recent decision in Gangalron & Steel Trading Co. Vs CIT (2022) 135 taxmann.com 244 (Bombay) held that where show cause notice did not indicate whether there was concealment of particulars of income or furnishing of incorrect particulars of such income, same would vitiate penalty proceedings. Thus, in view of aforesaid factual and legal discussion, I direct to delete the penalty levied under Section 271(1)(c) of the Act. In the result, grounds of appeal raised by the assessee are allowed.

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

Order announced in open court on 25th July, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 25/07/2023
**Ranjan*
Copy to:
1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat