

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, PRESIDENT, AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1430/Mum./2023

(Assessment Year : 2010-11)

Rajdev Steel (India)
Office no.15, 2nd Floor, 32, Vora Building
Gokuldharm CHS, Gulalwadi, Kika Street
Mumbai 400 004 PAN – AAJFR8062N

..... Appellant

v/s

Income Tax Officer
Ward-19(3)(1), Mumbai

.....Respondent

Assessee by : Shri Aditya Ramchandran
Revenue by : Smt. Mahita Nair

Date of Hearing – 12/07/2023

Date of Order – 27/07/2023

ORDER

The present appeal has been filed by the assessee challenging the impugned order dated 02/03/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], which in turn arose from the penalty order dated 14/12/2021 passed under section 271(1)(c) of the Act, for the assessment year 2010-11.

2. In this appeal, the assessee has raised the following grounds:-

"1. On the facts and circumstances of the case and in law, the learned Assessing Officer erred in initiating penalty proceedings u/s 271(1)(c) without mentioning specifically as to whether penalty is sought to be levied for "concealing the particulars of his income" or "furnishing inaccurate particulars

of his income" in the notice issued under Section 274 and, therefore, the order passed may please be declared as invalid.

2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the penalty of 1,82,882 levied under Section 271(1)(c)."

3. The brief facts of the case as emanating from the record are: The assessee is engaged in the business of trading in the metals. For the year under consideration, the assessee filed its return of income on 30/09/2010 declaring total income at Rs. 71,726. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, pursuant to the receipt of information from DGIT (Investigation) Wing, Mumbai about having initially received information from the Sales Tax Department of Maharashtra regarding some dealers indulged in the practice of providing accommodation entries in the form of issuing bogus sales/purchase bills without supplying any goods but providing accommodation entries and the assessee being one of the beneficiaries of such bogus bills, the proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued to the assessee. During the assessment proceedings, the notices sent under section 133(6) of the Act to the parties from whom the alleged purchases were made were returned unserved by the postal authorities. In the absence of details/information regarding the genuineness of the purchase made by the assessee, the Assessing Officer ("AO") vide order dated 29/01/2016 passed under section 143(3) read with section 147 of the Act made an addition of Rs.6,63,580 being 12.5% of the total non-genuine purchases.

4. Subsequently, the penalty order dated 14/12/2021 was passed by the AO under section 271(1)(c) of the Act wherein a penalty of Rs.1,82,882, was levied. In the further appeal against the penalty order, the learned CIT(A),

vide impugned order, dismissed the appeal filed by the assessee and upheld the levy of penalty under section 271(1)(c) of the Act. Being aggrieved, the assessee is in appeal before us.

5. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the penalty in the present case has been levied without specifying the head under which the same has been levied. The learned AR by referring to the penalty notices dated 29/01/2016 and 04/08/2021 issued under section 274 r/w section 271(1)(c) of the Act submitted that the AO has not specified whether the penalty has been levied for concealment of income or for furnishing inaccurate particulars of income.

6. On the other hand, the learned Departmental Representative ("*learned DR*") vehemently relied upon the order passed by the lower authorities.

7. We have considered the rival submissions and perused the material available on record. In the present case, the AO initiated penalty proceedings under section 271(1)(c) of the Act and levied a penalty of Rs.1,82,882. From the perusal of the notices dated 29/01/2016 and 04/08/2021 issued under section 274 r/w section 271(1)(c) of the Act, forming part of the paper book on pages 6 and 7, we find that the AO did not strike-off any of the twin charges i.e., concealment of particulars of income or furnishing of inaccurate particulars of income. The case of the assessee is squarely covered by the decision of the Hon'ble Jurisdictional High Court in Mohd. Farhan A. Shaikh v/s CIT, [2021] 434 ITR 1 (Bom.), wherein the Larger Bench of the Hon'ble Court has held that the defect in notice by not striking off the irrelevant matter would vitiate the penalty proceedings. Accordingly, respectfully following the

aforsaid decision of the Hon'ble Jurisdictional High Court, the penalty order passed under section 271(1)(c) of the Act is quashed.

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

Order pronounced in the open Court on 27/07/2023

Sd/-
G.S. PANNU
PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/07/2023

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The PCIT / CIT (Judicial);*
- (4) The DR, ITAT, Mumbai; and*
- (5) Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai