

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.386/NAG/2016
निर्धारण वर्ष / Assessment Year : 2007-08

Vikesh Chaturbhuj Agrawal, 23, Shradha, Middle Ring Road, Wardhmannagar, Nagpur- 440008. PAN : ABJPA9338H	Vs.	ITO, Ward-4(1), Nagpur.
Appellant		Respondent

Assessee by : Shri Nilesh Sindhwani
Revenue by : Smt. Rashmi Mathur

Date of hearing : 18.07.2023
Date of pronouncement : 04.08.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)-4, Nagpur [‘the CIT(A)’] dated 30.12.2015 for the assessment year 2007-08 confirming the levy of penalty of Rs.11,21,383/- u/s 271(1)(c) of the Income Tax Act, 1961 (‘the Act’).

2. Briefly, the facts of the case are that the appellant is an individual deriving income under the head “business”. The Return of Income for the assessment year 2007-08 was filed on 29.10.2007 declaring total income of Rs.3,22,870/-. Against the said return of

income, the assessment was completed by the Income Tax Officer, Ward-4(1), Nagpur ('the Assessing Officer') vide order dated 22.12.2009 passed u/s 143(3) of the Act at a total income of Rs.4,72,870/-.

Subsequently, on receipt of the information that the appellant had paid on-money consideration in cash over and above the consideration mentioned in the sale deed at the time of purchase of agricultural land, the Assessing Officer had issued a notice u/s 148 on 09.08.2011. Thereafter, the assessment u/s 143(3) r.w.s. 147 of the Act was completed by the Assessing Officer vide order dated 26.03.2013 at total income of Rs.37,76,536/-. While doing so, the Assessing Officer brought to tax alleged on-money consideration paid in cash of Rs.14,16,666/- and Rs.18,87,000/- at the time of purchase of agricultural lands, the source of which remains unexplained.

Being aggrieved by the above assessment order, an appeal was filed before the Id. CIT(A), who had confirmed the addition.

3. Even on further appeal before the Hon'ble ITAT vide ITA No.407/NAG/2013 for A.Y. 2007-08, order dated 03.07.2023 had confirmed the order of the Id. CIT(A).

4. Subsequently, the Assessing Officer had proceeded to levy of penalty u/s 271(1)(c) vide order dated 29.10.2013 holding that the

assessee guilty of furnishing inaccurate particulars of income and imposed penalty of Rs.11,21,383/-.

5. Being aggrieved by the penalty order, an appeal was filed before the Id. CIT(A), who vide impugned order confirmed the levy of penalty u/s 271(1)(c) of the Act.

6. Being aggrieved, the appellant is in appeal before us in the present appeal.

7. It is contended before us that the Assessing Officer ought not to have levied penalty u/s 271(1)(c) by holding the assessee guilty of furnishing inaccurate particulars of income without giving a finding as to which particulars filed by the assessee are found to be false.

8. On the other hand, Id. Sr. DR submits that the order of the Id. CIT(A) is well reasoned and a speaking order confirming the levy of penalty, therefore, requires no interference.

9. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the levy of penalty u/s 271(1)(c) of the Act. On mere perusal of the order of penalty u/s 271(1)(c), it would be clear that the Assessing Officer had levied the penalty u/s 271(1)(c) for furnishing of inaccurate particulars of income, but, the penalty order does not disclose which particulars filed by the assessee are found to be inaccurate by the Assessing Officer resulting into the addition. It is equally settled position of

law that mere addition made by the Assessing Officer does not entail levy of penalty. In the circumstances, we are of the considered opinion that it is not a fit case for levy of penalty u/s 271(1)(c) of the Act and, accordingly, we direct the Assessing Officer to delete the penalty of Rs.11,21,383/- u/s 271(1)(c) of the Act. Thus, the grounds of appeal filed by the assessee stand allowed.

10. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 04th day of August, 2023.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 04th August, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-4, Nagpur.
4. The Pr. CIT-3, Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर /
DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.