

IN THE INCOME TAX APPELLATE TRIBUNAL  
“DB” BENCH, JODHPUR  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER  
ITA No. 93/JODH/2018  
(A.Y: 2014-15)

M/s.The Central Cooperative Bank Ltd., Mahendra Gargieya & Associates, Adv , No537-538,5thFloor, MahimaTrinity, New Sanganer Road, Jaipur – 302019, Rajasthan.	Vs.	The ACIT, Circle Bhilwara. Rajasthan.
PAN/GIR No. : AAAAT8126B		
Appellant	..	Respondent

Assessee by :	None
Revenue by :	Ms. Nidhi Nair, JCIT -DR

Date of Hearing	10.08.2023
Date of Pronouncement	11.08.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals), Ajmer passed u/s 271(1)(c) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

1. The impugned penalty order u/s 271(1)(c) of the Act dated 18.05.2017 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.

2. The Id. CIT(A) erred in law as well as on the facts of the case in sustaining the penalty u/s 271(1)(c) of the Act with reference to the deduction claimed on account of Provision of Income Tax of Rs.30,00,000/-. The penalty so imposed and confirmed, being totally contrary to the provisions of law and facts kindly be deleted in full.

3. That the show cause notice issued u/s 274 r/w 271(1)(c) of the Act, is quite vague and did not at all specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment particulars of income or furnishing of inaccurate particulars of income. The impugned penalty based on such a notice being contrary to the provisions of law & facts kindly be quashed.

4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.

2. The brief facts of the case are that the assessee is a cooperative society engaged in the banking business. The assessee has filed the return of income for the A.Y 2014-15 on 29.11.2014 disclosing a total

income of Rs. 2,38,48,450/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for limited scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act along with the questionnaire was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. In the course of hearing proceedings, the assessee has vide letter dated 25.10.2016 has filed the revised computation of income mentioning that the commission of Rs. 23,51,055/- accrued from agricultural insurance company of India ltd was disclosed in the F.Y 2015-16 as it was received in the year instead of A.Y 2014-15. On the second disputed issue, where the assessee has made provision for income tax of Rs. 30 lakhs and the Assessing Officer(AO) found that the assessee has not added back in the original return and therefore the AO made the addition of aggregate amount of Rs.53,15,055/- and further the A.O has disallowed the excess of provision of surrender leave of Rs.15,390/- and assessed the total income of Rs. 2,92,14,900/- and

passed the order u/s 143(3) of the Act dated 04.11.2016.

3. Subsequently, the AO has initiated penalty proceedings u/s 271(1)(c) of the Act, whereas in the penalty proceedings the assessee was issued show cause notice and the assessee has filed the detailed explanations referred at Page 2 Para 3 of the order in respect of the commission amount and the provision for income tax and also the submissions in the assessment proceedings but the AO was not satisfied with the explanations and levied a penalty of Rs.18,24,100/- and passed the order u/s 271(1)(c) of the Act dated 18-05-2017.

4. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A). In the appellate proceedings, the CIT(A) has considered the grounds of appeal, submissions and has granted partial relief on the levy of penalty and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, none appeared on behalf of the assessee. Whereas the assessee has challenged in

the grounds of appeal that the notice issued for levy of penalty is invalid and the AO has not applied his mind on the non striking of the applicable limb/charge in the notice and the assessee has also filed the paper book. The Ld. DR submitted that the CIT(A) has considered the facts and granted partial relief in the levy of penalty and the Ld.DR supported the order of the CIT(A).

6. We heard the Ld. DR submissions and perused the material on record. The sole crux of the disputed issue is that the assessee has challenged the levy of penalty on legal issue as the A.O. has not applied his mind and non striking of charge in the penalty notice i.e. whether the charge is for concealment of income or furnishing of inaccurate particulars of income and further at page 21 of the paper book, the impugned notice was placed. We find the Jurisdictional Honble High Court of Bombay in Mohd Farhan A Shaikh Vs. DCIT in Tax Appeal No. 51 to 57 of 2012 dated 11.03.2021 (2021) 125 .taxmann. com 253 /434 ITR 1 (Bombay) has dealt on this disputed issue of not striking off charge in the penalty notice would vitiate

the penalty proceedings. The Hon'ble High Court has made observations at page 56 as under;

*180. One course of before us is curing a defect in the notice by referring to the assessment order, which may or not contain reason for the penalty proceedings. The other course of action is the prevention of defect in the notice – and that prevention takes just a tick mark. Prudence demands prevention is better than cure.*

*Answers:*

*Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Sec. 271(1)(c), does a mere defect in the notice – not striking off the irrelevant matter vitiate 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 assessee. But that translates into action only through the statutory notice under Sec. 271(1)(c), r.w.s. 274 of the 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 deferent statutory scheme that remains distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.*

*182. More Particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee's favour.*

7. We have considered the facts, circumstances and ratio of the decision of Honble High Court and are of the view that in the present case the A.O has not strike off the charge for levy of penalty for concealment of income or for furnishing of inaccurate particulars of income. Accordingly, we set aside the order of the CIT(A) and quash the penalty notice. And allow the grounds of appeal in favour of the assessee.

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

Order pronounced in the open court on 11.08.2023.

Sd/-  
(DR DIPAK P RIPOTE)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Jodhpur Dated 11.08.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Jodhpur
6. Guard file.

आदेशानुसार/ BY ORDER,

*ITA No. 93/Jodh/2018*  
*M/s. The Central Cooperative Bank Ltd.,Bhilwara.*

**- 8 -**

//True Copy//

1.

( Asst. Registrar)  
ITAT, Jodhpur