

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE 'B' BENCHES :: PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER &  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.707/PUN/2023  
(A.Y. 2016-17)

Shivaji Dattatray Sonawane, Sonawane Mala, Samangaon Road, Sinnar Phata, Nashik Road, Nashik.  PAN: ACAPS 3868 A	vs	ITO, Ward-2(1), Nashik.
Appellant		Respondent

Assessee by	:	Shri Naimish Sanjay Dixit
Revenue by	:	Shri M.G. Jasnani, DR
Date of hearing	:	14/09/2023
Date of pronouncement	:	20/09/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 05.04.2023 for A.Y.2016-17 as per the grounds of appeal on record.

2. The assessee has preferred this appeal, both on grounds of merits as well as on legal ground by submitting that the notice issued for levy of penalty u/sec. 271(1)(c) r.w.s. 274 of the Income Tax Act, 1961 (for short, 'the Act') is for concealment of income whereas the penalty, in fact, levied as per penalty order was for furnishing of inaccurate particulars of income. We shall first adjudicate this legal issue raised by the assessee.

3. At the outset, it is observed that the appeal is time barred by 08 days, for which condonation petition has been filed by the assessee. We have gone through the contents of the condonation petition and observe that such delay in filing, is not attributable to deliberate or *malafide* conduct of the assessee, if any and the delay caused were due to circumstances beyond personal control of the assessee. Ld.DR also did not raise any objection for condonation of delay. Considering these facts, the delay of 08 days in filing the appeal is condoned and this appeal is heard.

4. That, so far as the legal issue raised in this appeal is concerned, we observe from the penalty notice u/sec. 274 r.w.s. 271(1)(c), dated 08/04/2021 for A.Y. 2016-17 that notice has been issued for concealment of income. Whereas, penalty under 271(1)(c) order dated 15/12/2021, such penalty has been levied for furnishing inaccurate particulars of income as evident at para 7 of the said order. This is settled position of law that the penalty proceedings and assessment proceedings are different. Sec. 271(1)(c) lays down that the penalty proceedings can be initiated on the basis of either of the two charges i.e. concealment of particulars of income or furnishing of inaccurate particulars of income. Both these charges are entirely different. If the proceedings are initiated on the charge of concealment of income, then penalty cannot be levied on the charge of furnishing of inaccurate particulars of income, *vice-versa*. There must be a clear

finding about the charge, for which, penalty is imposed or initiated. It is incumbent upon the AO to state whether penalty was being levied for concealment of income or for furnishing of inaccurate particulars of income. In absence of such finding, the order would be bad in law. This has been held by the Hon'ble Gujarat High Court in the case of *New Sorathia Engineering Co. v. CIT* [2006] 202 CTR 188 (Guj) / [2006] 282 ITR 642 (Guj). The Hon'ble High Court held that it is incumbent upon the AO to state whether the penalty was being levied for concealment of income or whether any inaccurate particulars of income has been furnished by the assessee. The Hon'ble Delhi High Court in the case of *CIT vs. Rajan & Co.* [2005] 197 CTR 199 (Del.) has held that the AO should have proper application of mind and firm opinion that this is a case for initiation of penalty for concealment of income or that incorrect particulars has been furnished by the assessee. Reverting to the facts of the present case, the initiation of penalty through notice u/sec. 274 of the Act has been initiated for concealment of income whereas the actual penalty u/sec. 271(1)(c) has been levied for furnishing of inaccurate particulars of income. This makes the levy of penalty void *ab initio* and bad in law. The AO has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of income. This satisfaction of the AO about the concealment of particulars of income or furnishing inaccurate particulars of such income is essential before levying any penalty u/sec. 271(1)(c) as held by the Hon'ble Supreme Court in the

case of *CIT v. Atul Mohan Bindal* [2009] 225 CTR 248 (SC). In the present case before us, it is evident that there is no satisfaction arrived at for levy of penalty by the AO. The Hon'ble Karnataka High Court also in the case of *CIT v. Manjunatha Cotton & Ginning Factory* [2013] 263 CTR 153 (Kar) has taken the view that there must be specify charge for levying the penalty. The Hon'ble Bombay High Court in the case of *CIT v. Samson Perinchery* [2017] 392 ITR 4 (Bom) has observed and held that where there is no proper satisfaction for initiating penalty proceedings and in absence of proper show-cause notice to the assessee, there is no merit in levying penalty. In the present case, from the facts and circumstances, we observe that the AO, while initiating the penalty proceedings u/sec. 271(1)(c), has not arrived at even any minimum satisfaction and, that is the reason, the notice u/sec. 274 r.w.s. 271(1)(c) has been issued for concealment of particulars of income, whereas the actual penalty had been levied for furnishing of inaccurate particulars of income. Thus, such penalty u/sec. 271(1)(c) has to be invalid and void *ab initio* in the eyes of law.

4.1 The jurisdiction to impose penalty flows from the recording of the satisfaction of the AO. In case, there is a defect in the assumption of jurisdiction itself, no penalty can be levied as held in *CIT v. Munish Iron Store* [2003] 263 ITR 484 (P&H) as held in *CIT v. Ram Commercial Enterprises Ltd.* [2000] 246 ITR 568 (Del). A bare reading of the provisions of sec.271 and law laid down by the Hon'ble Supreme

Court in *D. M. Manasvi v. CIT* [1972] 86 ITR 557 (SC) and *CIT v. S.V. Angidi Chettiar* [1962] 44 I.T.R. 739 (SC), makes it clear that it is the authority imposing the penalty which has to form its opinion and record its satisfaction before initiating the penalty proceedings. Merely because, the penalty proceedings have been initiated, it cannot be assumed that such a satisfaction was arrived at in absence of the same being spelt out by the order of such authority. That, further before penalty is imposed, the assessee must be apprised of the precise charge brought against him. He must be told distinctly whether he is held guilty of having concealed the particulars of his income or having furnished inaccurate particulars thereof. Sec.274(1) provides for a reasonable opportunity to be given to the assessee, so that he can meet the charge where the penalty proceedings u/sec. 271(1)(c) are commenced against the assessee on a particular footing i.e. suppose for concealment of particulars of income, but the final conclusion of levying penalty is based on different footing altogether i.e. on the footing furnishing of inaccurate particulars of his income, it cannot be said that in such circumstances, the assessee had been given a reasonable opportunity of being heard before the order imposing penalty was passed. In such scenario, the penalty imposed shall not be justified as held in the following decisions:-

- (i) *CIT v. Lakhdhir Lalji* [1972] 85 ITR 77 (Guj)
- (ii) *Padma Ram Bharali v. CIT* [1977] 110 ITR 54 (Gau)
- (iii) *K. M. Bhatia (Quarry) v. CIT* [1992] 193 ITR 379 (Guj)

Therefore, on the context of principles of natural justice also,

such penalty cannot be imposed, if there is ambiguity in arriving at satisfaction by the AO. The basis of issuance of notice should remain the same while imposing penalty. If the notice is issued in the context of concealment of income, then the penalty cannot be levied by shifting the basis to inaccuracy of particulars. Therefore, even without going into the merits of the case, on this legal issue itself, we set aside the order of the NFAC and direct the AO to delete the penalty from the hands of the assessee. Since, the legal ground is answered in favour of the assessee, grounds on merit become infructuous. The appeal of the assessee stands allowed in terms as aforesaid.

5. In the result, appeal of the assessee is allowed.

Order pronounced in open Court on 20<sup>th</sup> September, 2023.

Sd/-  
(INTURI RAMA RAO)  
ACCOUNTANT MEMBER

sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Dated : 20<sup>th</sup> September, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "B" Bench Pune.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary  
ITAT, Pune.