आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / **ITA No. 1512/Hyd/2019**
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Bhaskara Enterprises, Hyderabad [PAN No. AADFB8889K]	Vs.	Dy. Commissioner of Income Tax, Circle-15(1), Hyderabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri A.V. Raghuram, AR
राजस्व द्वारा / Revenue by: Shri KPRR Murthy, DR

सुनवाई की तारीख/Date of hearing: 12/07/2023
घोषणा की तारीख/Pronouncement on: 22/09/2023

आदेश / **ORDER**

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 31/07/2019 passed by the learned Commissioner of Income Tax (Appeals)-7, Hyderabad ("Ld. CIT(A)"), in the case of M/s. Bhaskara Enterprises ("the assessee") for the assessment year 2013-14, assessee preferred this appeal.

2. Facts of the case are that the assessee is a partnership firm, engaged in the civil contracts with Railway Department and others. As per the information available with the Income Tax Department, the assessee received contractual receipts to the tune of Rs. 8,31,23,156/- but failed to file the return of income for the assessment year 2013-14. Learned Assessing Officer recorded reasons for re-opening the case, issued a notice under section 148 of the Income Tax Act, 1961 (for short "the Act"), and re-opened the assessment. Assessee filed the return of income declaring gross receipts to the tune of Rs. 6,87,61,860/- in the profit and loss account as on 31/03/2013 and admitted tax at Rs. 48,78,240/-, after debiting all the expenditure. When asked for the bills, vouchers and related documents, assessee could not furnish the same. So, basing on the entries in Form 26AS with reference to ITS data_ATS database of Income Tax Department, learned Assessing Officer determined the contractual receipts of the assessee at Rs. 8,31,23,156/-, estimated the income @8% thereof and added the difference to the income of the assessee.

3. In appeal, learned CIT(A) granted relief to the assessee in respect of the quantum addition and confirmed that the assessee firm was in receipt of gross receipts to the extent of Rs. 6,87,61,860/-. Pursuant to the order of the learned CIT(A), income of the assessee was determined at 55,00,949/- as business receipt and Rs. 9,87,545/- towards interest received.

4. Considering these two as concealed incomes since the assessee firm did not file any return of income and also for furnishing inaccurate particulars of income insofar as the contractual receipts are concerned, learned Assessing Officer initiated proceedings under section 271(1)(c) of

the Act and by order dated 29/06/2018, levied a penalty of Rs. 20,04,944/-.

5. Aggrieved by levy of penalty, assessee preferred appeal before the learned CIT(A) and contended that there was delay in filing of return of income for the assessment year 2013-14 which was not intentional, and the turnover taken by the learned Assessing Officer was incorrect. It was further contended that all the facts were brought to the notice of the learned CIT(A) in the appeal against quantum addition, and the learned CIT(A) accepted the same.

6. In the penalty appeal, the learned CIT(A) did not agree with the contention of the assessee that the assessee did not furnish any inaccurate particulars of income. According to the learned CIT(A), but for the notice issued under section 148 of the Act, the income of the assessee would have escaped assessment, since the assessee did not originally file the return of income. Learned CIT(A) accordingly dismissed the appeal.

7. Assessee is, therefore, before us in this appeal contending that the assessee filed the return of income in response to notice under section 148 of the Act by duly disclosing complete information, and, therefore, there was neither furnishing inaccurate particulars nor concealment of income. Argument of learned AR is twofold. Firstly, he challenged the validity of issuance of notice under section 274 of the Act stating that the inappropriate portions thereof are not strike-off and in view of the decision of the Hon'ble jurisdictional High Court in the case of PCIT vs. Smt. Baisetty Revathi [2018] 99 taxmann.com 442 (Andhra Pradesh and Telangana) and the Full Bench judgment of Hon'ble Bombay High Court at

Goa in the case of Mohd. Farhan A Shaikh vs. DCIT (2021) 434 ITR 1 (Bom) (FB) such a defect in the notice vitiates the entire proceedings.

8. Insofar as the merits of the case are concerned, learned AR submitted that in response to the penalty notice, the assessee submitted to the learned Assessing Officer about the financial hardships suffered by the assessee, but the learned Assessing Officer did not consider the same and proceeded to levy the penalty. His contention is that the assessee, as required under section 271(1)(c) of the Act offered bonafide reasons for non-filing of return and for not levying penalty which are duly supported by the turnover figures but the authorities without returning a finding as to the correctness of such explanation, levied the penalty and sustained the same. According to him, penalty could be levied only if the explanation offered by the assessee is found to be false or unsubstantiated.

9. Per contra, learned DR submitted that the view taken by the Hon'ble High Court in the case of Smt. Baisetty Revathi (supra) is contrary to the law laid down by the Hon'ble Apex Court in the case of CIT vs. S.V. Angidi Chettiar [1962] 44 ITR 739 (SC), and the Hon'ble jurisdictional High Court in the cases of CIT v. Chandulal [1985] 20 Taxman 111 (Andhra Pradesh) and Sreenivasa Pitty & Sons vs. CIT reported in [1988] 38 Taxman 309 (Andhra Pradesh). He further submitted a Co-ordinate Benches of the Tribunal, in the case of Moola Padmaja Vs ACIT in ITA No.234/Hyd/2022 for the assessment year 2012-13 considered the decisions in the cases of Smt. Baisetty Revathi (supra), CIT vs. Lotus Constructions, 370 ITR 475 and Manjunatha Cotton and Ginning Factory, 359 ITR 565 and took a view that merely for non-specifying in the notice as to under which limb the penalty is levied i.e., for concealment of income or furnishing inaccurate particular

of income thereof, the penalty cannot be cancelled especially when the assessee, who is a non-filer, was put to notice, understood the charge and replied to such notice issued by the learned Assessing Officer.

10. Insofar as the merits are concerned, learned DR submitted that the learned Assessing Officer referred to the letter dated 29/06/2018 referred to by the learned AR. According to the learned DR, the reasons assigned by the assessee in such letter do not constitute sufficient cause for not filing the return. Apart from this, learned DR submitted that there was no whisper in the return of income filed by the assessee to the interest income of Rs. 9,87,545/-. He submitted that but for the issuance of notice under section 148 of the Act, the income of the assessee would have escaped assessment and, therefore, the assessee is guilty of both furnishing inaccurate particulars and concealment of income. We shall now deal with these aspects.

11. In reply learned AR submitted that the Co-ordinate Benches of the Tribunal failed to follow the latest decision of the Hon'ble jurisdictional High Court in the case of Smt. Baisetty Revathi (supra), but followed the earlier decisions. He prayed to follow the latest decision of the Hon'ble jurisdictional High Court in the case of Smt. Baisetty Revathi (supra).

12. Coming to the first limb of the argument, the contention of the learned AR is that for not striking of inappropriate portions in the notice under section 274 of the Act, assumption of jurisdiction by the learned Assessing Officer to initiate proceedings under section 271(1)(c) of the Act is bad under law. On this aspect, in the case of CIT vs. S.V. Angidi Chettiar

(supra), we find that the Hon'ble Apex Court held that the condition for the exercise of the jurisdiction to initiate any step for imposing penalty is the satisfaction of the learned Assessing Officer before conclusion of the proceeding under the Act, but not the issue of a notice or initiation of any step for imposing penalty.

13. In the case of CIT v. Chandulal [1985] 20 Taxman 111 (Andhra Pradesh) the Hon'ble jurisdictional High Court dealt with this issue of legality of the notice wherein inappropriate portions of the notice issued under section 274 of the Act were not struck off. In that case, the Tribunal followed the decision of Hon'ble Kerala High Court in N.N. Subramania Iyer vs. Union of India [1974] 97 ITR 228 and accepted the contention of the assessee that the penalty notice issued by the ITO was invalid inasmuch as the ITO did not strike out inappropriate portions of the notice. The Tribunal accordingly held that the penalty notice issued by the ITO suffered from a serious infirmity of vagueness and ambiguity, and quashed the penalty order passed by the ITO. While dissenting with the view taken in the case of N.N. Subramania Iyer vs. Union of India (supra), the Hon'ble jurisdictional High Court, pleased to observe that,-

> *"We are unable to subscribe to the view that by reason of the ITO not striking out inappropriate portions of the notice issued under s. 274, the notice issued was rendered invalid. In the first place, it has to be borne in mind that the notice issued under s. 274 is not prescribed under the rules. It is a notice administratively devised for the purpose of putting the assessee in the knowledge of the fact that the ITO initiated proceedings for levy of penalty in order to enable him to show cause why penalty should not be levied. So long as the object of putting the assessee in the awareness and knowledge of the initiation of the penalty proceedings is accomplished by the issuance of a notice, the question of invalidity does not arise on account of either inappropriate language in the notice or on account*

of any inappropriate portions of the notice not being stuck off. There was no offence to any of the rules prescribed in as much as the notice is given to secure the assessee's explanation to fulfil the requirement of natural justice. It is not in dispute that the assessee did not entertain any doubt in his mind when he received the notice issued by the ITO under s. 274. If the assessee was under a mistaken view about the real intent and effect of the notice issued, he could have asked the ITO to clarify whether the penalty proceedings were initiated for concealment of income or for furnishing inaccurate particulars of such income. In the present case, it is not denied that in the explanation given to the ITO in response to the notice issued under s. 274, the assessee did not raise any objection on the ground that the notice did not convey the nature of offence committed by him. No objection was also taken regarding the validity of the notice on that ground. It is, therefore, clear that the assessee was not under any misapprehension about the offence alleged against him. There was proper understanding and indeed, in the explanation filed, the assessee dealt with the reasons for contending that no penalty could be levied under s. 271(1)(c). It was not shown to us that any prejudice was caused to the assessee on account of the assesseee not being put in the knowledge of the nature of offence committed by him. The contention regarding the validity of the notice was urged only during the course of the appeal before the Tribunal and it seems to us that the explanation was only an after-thought. The assessee certainly understood the offence alleged against him and showed cause to the ITO by pointing of s. 274 would apply not only to concealment of income but also for furnishing inaccurate particulars of such income and where the offence is two-fold, there is no need on the part of the ITO to strike off any inappropriate portions. In the present case, the offence alleged against the assessee is that there is concealment of income and furnishing of inaccurate particulars of such income. It is not, therefore, necessary for the ITO to strike out any portion of the notice issued to him.

9. The principle of natural justice contained in s. 274 which requires that an assessee shall be heard before levying penalty under s. 271 is to ensure that the basic requirement of fair play in action is fulfilled. The rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity, it has to be established that prejudice has been caused to the party concerned by the procedure followed. We have already mentioned above that the assessee has not shown that any such prejudice has been caused to him. Attention may be invited in this connection to

> *the decision of the Supreme Court in Tripathi v. State Bank of India. We have perused the judgment of the Kerala High Court in Subramania Iyer v. Union of India [1974] 97 ITR 228, on which the assessee has relied. With great respect, we are unable to agree that the mere non-striking off of the inappropriate portions in a notice renders the notice automatically invalid unless in a further enquiry in the matter it is shown that by reason of the notice not properly conveying the gist of the offence to the assessee, prejudice is caused to him. We cannot accept as a general proposition of law that in every case a notice is rendered invalid just because inappropriate portions in the notice are not struck off."*

14. In the case of Sreenivasa Pitty & Sons vs. CIT (supra), the Hon'ble jurisdictional High Court noticed the decision in Chandulal (supra) and held that even though the notice was defective, if the assessee understands that such a notice was one for levy of penalty under section 271(1)(c) of the Act, then there is no prejudice caused to the assessee by the defective nature of the notice. In the case of PCIT vs. Smt. Baisetty Revathi (supra), the earlier decisions in the cases of Chandulal (supra) and Sreenivasa Pitty (supra) were not brought to the notice of the Hon'ble Court.

15. What emanates from the decision of Hon'ble Apex Court in the case of Angidi Chettiar (supra), and the decisions of the Hon'ble jurisdictional High Court in the cases of Chandulal (supra) and Sreenivasa Pitty (supra) is that jurisdiction to initiate proceedings under section 271(1)(c) of the Act flows from the satisfaction recorded by the learned Assessing Officer before concluding the assessment and not from the notice issued under section 274 of the Act and unless and until the assessee pleads the proves any prejudice that occasioned due to the learned Assessing Officer not striking out inappropriate portions of the notice issued under section 274 of the Act, namely, whether it was furnishing inaccurate particulars or concealment of income that occasioned in the issuance of such notice, will

not vitiate the notice and will not render that notice invalid for not striking of the inappropriate portion.

16. This view taken by the earlier division Benches was not brought to the notice of the Hon'ble Bench in the case of PCIT vs. Smt. Baisetty Revathi (supra). On this aspect, the Full Bench of the Hon'ble Madhya Pradesh High Court in the case of Jabalpur Bus Operators Association vs. State of Madhya Pradesh, AIR 2003 MP 81 held that in case of conflict between judgments of two Division Benches of equal strength, the decision of earlier Division Bench shall be followed, except when it is explained by the latter Division Bench in which case the decision of latter Division Bench shall be binding.

17. In the case on hand, the assessee had never taken such a plea either before the learned Assessing Officer or before the learned CIT(A), but on the other hand, understood the nature of charge against him as is evident from his reply to the notice under section 274 of the Act. We, therefore, respectfully following this precedent, hold that since it is not the case of the assessee that prejudice is occasioned to him because of not striking out inappropriate portions of the notice issued under section 274 of the Act, such striking out inappropriate portions of the notice issued under section 274 of the Act will not render such notice invalid.

18. Insofar as the explanation of the assessee for not filing the return of income is concerned, case of the assessee is as follows:

> *"The appellant is doing business of M/s. Bhaskara Enterprises from 1996. In the initial stages, the firm was doing a very good business. However, due to passage of time competition increased and in the accounting years relevant to the Assessment Years referred to above the applicant found it*

extremely difficult to face the stiff competition. As a result of this stiff competition, the sales have shown regular downward trend. assessment year 2013-14 – Rs. 6,87,61,860/-, assessment year 2014-15 – Rs. 4,18,40,981/-, assessment year 2015-16 – Rs. 17,51,333/- to 2016-17 – Rs. 5,99,498/-.

That he could not be able to pay the fees to his children. Added to this problem the O.D. Limits with Ing. Vysya Bank, Uppal Branch, Hyderabad have stopped O.D. Limits to the tune of Rs. 50 Lakhs and Bank Guarantees to the tune of Rs. 35 Lakhs were revoked and the firm was forced to arrange the amounts. The miseries till now are continuing and the firm is unable to execute any contracts from the last 4 years except daily the continuing of old works pending only that too few lakhs only."

19. The above explanation offered by the assessee evokes pity, but legally not acceptable because the assessee did not file the return of income till the issuance of notice under section 148 of the Act and even after issuance of such notice, the assessee filed the return of income belatedly on 20/02/2017. In spite of all the hardship pleaded by the assessee, he could pay the entire tax demand of Rs.10,05,987/- subsequent to the assessment under section 143(3) read with section 147 of the Act. On the face of all these circumstances, we find it difficult to accept the explanation of the assessee to delete the penalty. Grounds of appeal are accordingly found to be devoid of merits and are dismissed.

20. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on this the 22nd day of September, 2023.

Sd/-	Sd/-
(RAMA KANTA PANDA)	**(K. NARASIMHA CHARY)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Hyderabad, Dated: 22/09/2023

TNMM

Copy forwarded to:

1. M/s. Bhaskara Enterprises, D.No. 2-17-18/C, Plot No. 9, Dharmapuri Colony, Near Sai Baba Temple, Uppal, Hyderabad.
2. Dy. Commissioner of Income Tax, Circle-15(1), Hyderabad.
3. Pr.CIT-7, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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