

IN THE INCOME TAX APPELLATE TRIBUNAL  
NAGPUR BENCH : NAGPUR

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
DR. DIPAK RIPOTE, ACCOUNTANT MEMBER

I.T.A.Nos.67 & 68/NAG./2021  
Assessment Years 2010-2011 & 2015-2016

Shri Jagdish S. Agrawal, 23, Behind Sudhanshu Hall, Abhang Survie Layout, Bhagyashree Housing Society, Ayodhya Nagar, Nagpur – 440 024 Maharashtra. PAN AEWPA3791G	vs.	The ACIT, Central Circle -1(2), 2 <sup>nd</sup> Floor, Aaykar Bhavan, Civil Lines, Nagpur. Maharashtra. PIN – 440 001
(Appellant)		(Respondent)

I.T.A.No.70/NAG./2021  
Assessment Year 2015-2016

Smt. Preeti Jagdish Agrawal, 23, Behind Sudhanshu Hall, Abhang Survie Layout, Bhagyashree Housing Society, Ayodhya Nagar, Nagpur – 440 024 Maharashtra. PAN AFVPA1153J	vs.	The ACIT, Central Circle -1(2), 2 <sup>nd</sup> Floor, Aaykar Bhavan, Civil Lines, Nagpur. Maharashtra. PIN – 440 001
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Dr. Kaumudi Patil, CIT-DR

Date of Hearing :	22.09.2023
Date of Pronouncement :	06.10.2023

**ORDER**

**PER SATBEER SINGH GODARA, J.M. :**

The instant batch of three appeals pertains to twin assessees viz., Shri Jagdish S. Agrawal and Smt. Preeti Jagdish Agrawal. The former assessee has filed his twin

appeals ITA.Nos.67 and 68/Nag./2021 for assessment years 2010-11 and 2015-16 against the CIT(A)-3, Nagpur's as many Orders in case Nos.CIT(A)-3/10074/2018-19 dated 27.10.2020 and in CIT(A)-3/10062/2018-19 dated 10.11.2020 respectively. And the latter assessee's appeal in ITA.No.70/NAG./2021 for assessment year 2015-2016 directed against the very CIT(A)'s order dated 10.11.2020 in case no.CIT(A)-3/10067/2018-19. Relevant proceedings in assessment year 2010-2011 are u/sec.271(1)(c) and in assessment year 2015-2016 are u/sec.271AAB of the Income Tax Act, 1961 (in short "the Act"); respectively.

None appeared for assessee's behest despite service of notice. They are, therefore, proceeded ex-parte.

2. It is noticed at the outset that these assessee's three appeals ITA.Nos.67, 68 & 70/NAG./2021 suffer from 234, 220 and 225 day's delay, case-wise respectively, is condoned since falling under Covid-2019 pandemic outbreak period between 15.03.2020 to 28.02.2022 as per hon'ble apex court's directions in *Cognizance for Extension of Limitation, In re 438 ITR 296 (SC)* read with judgment in *Cognizance for Extension of Limitation, In re 432 ITR 206 (SC)* dated 08-03-2021 and 421 ITR 314, excluding the covid-19 pandemic outbreak period from for all intents and purposes under the limitation law.

3. We advert to the former assessee's appeal ITA.No.67/Nag./2021 for assessment year 2010-2011 involving sec.271(1)(c) proceedings. It is noted from perusal of the case file in para 4.2 page-9 of the CIT(A)'s order that there is no rebuttal about the clinching fact coming from the Revenue side that the Assessing Officer's corresponding show cause notice had nowhere specified as to whether this is an instance of concealment or furnishing of inaccurate particulars of taxable income. That being the case, we quote hon'ble jurisdictional high court's landmark decision Mohd. Farhan A. Shaikh vs. ACIT [2021] 43 ITR 1 (Bom.) that an Assessing Officer's failure to this effect indeed vitiates even the penalty proceedings. Faced with the situation, we reject the Revenue's vehement contentions supporting the impugned penalty. This former assessee's appeal ITA.No.67/Nag./2021 is accepted in very terms.

4. Next comes the latter assessment year 2015-16 involving both these assessee's appeals each ITA.Nos.68 & 70/Nag./2021 in sec.271AAB proceedings. It is noted with the able assistance coming from the Revenue side that the search herein was conducted on 05.08.2015. And the Assessing Officer had initiated penalty proceedings u/sec.271(1)(c) of the Act as it emerges from his penalty order(s) dated 28.06.2018 in both these cases. Faced with the situation, the CIT(A) appears to have directed the Assessing Officer to invoke

sec.271AAB proceedings as per para-5 in the lower appellate order.

5. It is in this identical backdrop of facts that we are constrained to hold that such a failure on Assessing Officer's part in not initiating the proper penalty proceedings under sec.271AAB since he had invoked sec.271(1)(c) of the Act, would equally vitiate the entire proceedings in above terms as such an inherent defect would hardly be cured by the CIT(A) in his sec.250/251 directions. We thus accept both these assessee's identical pleadings to this effect. The instant twin assessee's appeals ITA.Nos.68 & 70/Nag./2021 succeed therefore.

6. To sum-up, these twin assessee's three appeals ITA.Nos.67, 68 & 70/Nag./2021 are allowed in above terms. A copy of this order be placed in the respective case files.

Order pronounced in the open Court on 06.10.2023.

Sd/-  
[DR. DIPAK P. RIPOTE]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 06<sup>th</sup> October, 2023

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The CIT(A)-3, Nagpur.
4.	The CIT (Central), Nagpur.
5.	D.R. ITAT, Nagpur Bench, Nagpur.
6.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,  
Pune.