

IN THE INCOME TAX APPELLATE TRIBUNAL  
PANAJI BENCH, PANAJI  
(AT e-Court, PUNE)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.28/PAN/2022

निर्धारण वर्ष / Assessment Year : 2014-15

Braganza and Fulari Ventures Private Limited, 303-304, 3 <sup>rd</sup> Floor, B&F Habitat Building, Canca Parra Bypass, Ximer Bardez, Mapusa, Goa – 403507 PAN : AAECB3628E	Vs.	ACIT, Circle-2(1), Panaji
Appellant		Respondent

Assessee by None  
Revenue by Shri N. Shrikanth  
Date of hearing 05-10-2023  
Date of pronouncement 06-10-2023

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A)-2, Panaji on 18-02-2022 confirming the penalty of Rs.3,39,105/- imposed by the Assessing Officer (AO) u/s.271(1)(c) of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2014-15.

2. Briefly stated, the facts of the case are that the assessee filed its return declaring total income at Rs.1,01,93,260/-. The AO, while finalising the assessment u/s.143(3), made disallowance of Rs.10,97,428/- towards certain expenses claimed in the Profit and loss account on the ground that they ought to have been capitalized. He finalised the penalty order without specifically clarifying as to whether the penalty was levied for furnishing of inaccurate particulars of income or for concealment of particulars of income. This issue was raised before the Id. CIT(A) as well urging to delete the penalty because the AO neither at the time of recording of satisfaction nor in the penalty order demonstrated as to whether it was a case of furnishing of inaccurate particulars of income or concealment of particulars of income. The Id. CIT(A) held that there are three limbs of the penalty u/s.271(1)(c), namely, (i) concealment of the particulars of income; (ii) furnishing of inaccurate particulars of income; and (iii) concealment of particulars of income and furnishing of inaccurate particulars of income co-existing. He thus concluded that the case of the assessee was covered under the third limb. The assessee is before the Tribunal.

3. We have heard the Id. DR and gone through the relevant material on record. There is no appearance from the side of

assessee despite notice. It is seen that there is only one addition made in the assessment order and then subjected to penalty u/s.271(1)(c) of the Act. From the nature of disallowance, which is disallowance of expenses on the ground that they should have been capitalized, it is manifestly a case of furnishing of inaccurate particulars of income. The Id. CIT(A) has opined that there are three limbs of section u/s.271(1)(c), *inter alia*, a combination of both the first two limbs of concealment resulting because of furnishing of inaccurate particulars of income and thus brought the case within it by holding that: 'the assessee had deliberately concealed his taxable income by making inaccurate claims and that the concealment factor was also clearly established'. In our opinion, every furnishing of inaccurate particulars of income leading to addition ultimately results in enhancement of income. Similarly, every concealment of particulars of income leading to addition results in enhancement of income. Both the limbs – (i) furnishing of inaccurate particulars of income and (ii) concealment of particulars of income - are separate and distinct from each other. Whereas the concealment limb refers to additions towards items of income not shown by the assessee; and the limb of furnishing of inaccurate particulars of income would, *inter alia*, refer to

disallowance of expenses claimed by the assessee as deductible. Additions made under both the limbs eventually give a foundation for imposition of penalty u/s.271(1)(c), subject to the fulfilment of requisite conditions of the section. One cannot say that disallowance of expenses has resulted into 'concealment of income for furnishing of inaccurate particulars of income'. The third category created by the Id. CIT(A) does not find its presence in any part of the provision. *Qua* one addition, it can either be a case of concealment of particulars of income or furnishing of inaccurate particulars of income. The action of the AO in initiating and passing the order on both the limbs together, can be justified if there are two or more additions made by him - some of them falling in realm of the first limb and others in the second. Howbeit, if there is only one item of addition, that can be either a case of concealment of particulars of income or furnishing of inaccurate particulars of income and cannot be a combination of the two.

4. We are confronted with a situation in which only one addition was made by the AO, which is towards disallowance of expenses. This strictly falls within the ambit of furnishing of inaccurate particulars of income. In that view of the matter, the penalty ought to have been levied only with reference to furnishing of inaccurate

particulars of income without having any reference to the second limb of concealment of particulars of income.

5. It goes without saying that the foundation for any penalty is the charge on which the penalty is levied. It is this charge, as set out in the penalty notice, which the assessee has to meet with culminating into imposition or otherwise of the penalty. The Full bench of Hon'ble jurisdictional High Court in *Mohd. Farhan A. Shaikh & Anr. vs. ACIT (2021) 434 ITR 1 (Bom)(FB)* has held that if the charge in the notice u/s 274 is vague i.e. irrelevant charge has not been struck off, the penalty order u/s 271(1)(c) gets vitiated. Similar view has been taken by the Hon'ble Bombay High Court in *PCIT vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxmann.com 248 (Bom)*. The SLP of Department against this judgment has since been dismissed in *PCIT vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 437 ITR (9) (ST) (SC)*. It is unambiguous from the above enunciation of law that the issuance of a lawful notice u/s 274, clearly setting out the charge for which the penalty is proposed to be levied, is *sine qua non*, for passing a valid penalty order. Where notice u/s 274 is vague, penalty order gets vitiated.

6. Adverting to the facts of the instant case, we find that the assessee ought to have been visited with the penalty on the charge of furnishing of inaccurate particulars of income. As against that, the penalty order was passed with reference to both, namely, furnishing of inaccurate particulars of income and concealment as well. Under these circumstances, we are satisfied that the order passed by the Id. CIT(A) cannot be sustained. The same is, therefore, overturned and the penalty is directed to be deleted.

7. In the result, the appeal is allowed.

Order pronounced in the Open Court on 06<sup>th</sup> October, 2023.

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

Sd/-  
(R.S.SYAL)  
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 06<sup>th</sup> October, 2023  
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The Pr.CIT , Panaji
4. DR, ITAT, Panaji Bench, Panaji
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलार्थी अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	05-10-2023	Sr.PS
2.	Draft placed before author	06-10-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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