

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI PRASHANT MAHARISHI, AM

आयकर अपील सं/ I.T.A. No.2212/Mum/2023
(निर्धारण वर्ष / Assessment Year: 2015-16)

ITO-12(1)(1) Room No.129 1 st Floor, Aayakar Bhavan, M. H. Road, Mumbai-400020.	बनाम/ Vs.	Ankita Reality and Development Pvt. Ltd. CTS-40-44, Sahara India Points, SV Road, Goregaon West, Mumbai- 400104.
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Cross Objection No. 106/Mum/2023
Arising out of I.T.A. No.2212/Mum/2023
(निर्धारण वर्ष / Assessment Year: 2015-16)

Ankita Reality and Development Pvt. Ltd. CTS-40-44, Sahara India Points, SV Road, Goregaon West, Mumbai-400104.	बनाम/ Vs.	ITO-12(1)(1) Room No.129 1 st Floor, Aayakar Bhavan, M. H. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECA4513D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Siddharth Srivastave/Ms. Ekta Shah
Revenue by:	Shri Manoj Kumar Sinha (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 17/10/2023
घोषणा की तारीख /Date of Pronouncement: 31/10/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the revenue and the cross-objection (CO) preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 19.04.2023 for the AY 2015-16.

2. The main grievance of the revenue is against the action of the Ld. CIT(A) deleting the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter "the Act") and pointed out that assessee had not



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filed the return of income u/s 139(1) of the Act. And the Cross-objection (CO) has been filed by the assessee, supporting the action of the Ld CIT(A), as well as has raised certain legal issues.

3. The revenue has filed the following grounds of appeal which reads as under: -

“1. “Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the penalty w/s.271(1)(c) amounting to Rs.2,40,84,214/without appreciating the fact that the assessee failed to furnish its return of income on or before due date as per provisions of section 139(1) and also on or before the extended period as per provisions of section 139(1), i.e. 31.03.2017.”

2. ‘Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the penalty u/s.271(1)(c) without appreciating the fact that the assessee has failed to furnish return of income in spite of having taxable income during the year under consideration.’”

4. The assessee has filed the following cross objection which reads as under: -

“1. The Learned Assessing Officer Ward 12(1)(1), Mumbai has grossly erred in levying penalty and passing order under section 271(1)(c) of the Income-tax Act, 1961(‘Act’) despite having no jurisdiction whatsoever in view of the introduction of Faceless Penalty Scheme w.e.f. 2021 onwards.

2. The Learned Assessing Officer has grossly erred in levying penalty under section 271(1)(c) of the Act without obtaining prior approval of the Joint Commissioner of Income Tax and



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thereby violating the procedure laid down in section 274 of the Act.

3. The Learned Assessing Officer has erred in levying penalty under section 271(1)(c) of the Act since he has failed to record his satisfaction at the time of passing the assessment order under section 147 of the Act.

4. The Learned Assessing Officer has erred in levying penalty under section 271(1)(c) of the Income-tax Act, 1961 ('Act') on the ground that the validity of the penalty order passed by the Learned Assessing Officer under section 271(1) (c) of the Act is bad in law and void ab initio as the notice issued under section 274 r.w.s 271(1)(c) of the Act is not in accordance with the law especially since he has grossly erred in not being specific with regards to the limb under which he intends to initiate penalty proceedings.”

5. We will first deal with the revenue appeal wherein the Ld. CIT(A)/NFAC has deleted the addition on merits of the penalty.

6. Brief facts are that the AO while imposing the penalty vide order dated 14.09.2022 u/s 271(1)(c) of the Act noted that in this case, the department *inter-alia* had received information about the taxpayers who all did not file the return of income [Non-filers Monitoring System (NMS)] as well as Annual Information Return (AIR) that the assessee had earned income to the tune of Rs.156,71,87,876/- on which TDS u/s 194C of the Act has been paid by the payer after deducting the same from contractual payments payable to the assessee company, an amount of Rs.156,71,87,876/-. According to the AO, the



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assessee had neither filed the return of income for AY. 2015-16 u/s 139(1) of the Act nor u/s 139(4) of the Act within the extended period upto 31.03.2017. Therefore, the AO reopened the assessment by issuance of notice u/s 148 of the Act on 31.03.2021 pursuant to which, assessee filed return of income (*manually*) as well as the computation of income on 13.09.2021, and filed the relevant documents i.e. copy of profit & loss account, and balance-sheet from which the AO noted that the assessee had also shown Long Term Capital Gain (LTCG) of Rs.10,58,34,090/-. And the AO accepted the return of income filed by assessee in response to the notice u/s 148 of the Act and assessed the income at Rs.10,58,34,090/- by order dated 24.03.2022 passed u/s 147 r.w.s. 144B of the Act and initiated penalty u/s 271(1)(c) of the Act for “*concealment of income*” dated 24.03.2022. Thereafter, the AO notes that he again issued notices on 03.08.2022 and 16.08.2022; and that he considered the assessee’s reply that it had filed the return of income showing capital gain of Rs.10,58,34,090/- which has been accepted by department, and had reiterated the back-ground facts (*infra*) which led to the *omission* in filing the return of income u/s 139(1)/139(4) of the Act. According to assessee, it had entrusted the filing of return to an accountant of company, who omitted to file the same within the prescribed time, which fact is seen to be corroborated from perusal of Form No.26AS; and later that person/official left the job whereas the assessee was of *bonafide* belief that return has been duly filed by that official within the time. According to assessee, to its surprise it received notice u/s 148 of the Act informing the reopening of the



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assessment. And thereafter, the assessee had filed the return of income (*manually*) and which has been accepted by department (*supra*). And also brought to the notice of the AO *inter-alia* the afore-said facts “*the assessee had deposited the amount due on account of income tax well within the stipulated time, which fact is verifiable from Form No. 26AS (copy annexed herewith), on a perusal of which it will be appreciated that TDS of Rs.13,71,478.76 was deducted at source and the assessee has also deposited Rs.56,71,792/-, Rs.99,00,000/- and another sum of Rs.99,00,000/- (aggregating to Rs. 2,54,71,792/-) on 11.03.2015 meaning thereby that advance tax which had accrued on the sale of the property was duly deposited by the assessee well before the due dated 11.03.2015 whereas, the due date was 15.03.2015*”. And the assessee pleaded that from the aforesaid facts, it is discernable that the assessee has not ‘*concealed any particulars of income*’ and the tax has been paid by way of *advance tax* as well as *TDS* ; and due to inadvertent negligence/omission on the part of the accountant in not filing the return of income within time, which *omission* should not be taken adversely against the assessee for levying penalty alleging *concealment of income*, when the fact remains that there is no concealment of income whatsoever. However, the AO rejected the plea of the assessee and levied penalty for concealment of income u/s 271(1)(c) of the Act to the tune of Rs.2,40,84,214/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the penalty by observing as under: -



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“5. CIT’s Remarks and Decision:

From the above, it is found that the AO has levied penalty mainly on the grounds that assessee has not filed the return of income within the extended period i.e. upto March 2017, and that the assessee as declared its income only when e notice u/s 148 was issued. Further held that payment of Advance Tax and deduction of TDS on the income does not grant any exemption as per the law to the assessee for not filing the relevant return of income. Hence, the AO treated the assessee as a person who has concealed the particulars of income for AY 2015-16 and levied penalty @ 100% of the tax sought to be evaded which works out to Rs. 2,40,84,214/-. From the facts of the case, it is found that the assessee stated that the person who was entrusted with the job of filing the return did not file the return in time, on receipt of notice u/s 148, the appellant was unable to upload the return due to technical issues and therefore, the appellant had send the return by registered speed post to the AO which was duly received and acknowledged by the Assessing Officer. This return filed by the appellant manually was not appearing in the Income Tax online system. However, after considering manual return receipt, Computation of income, Profit & Loss A/c, Balance sheet and the Long Term Capital Gain returned of Rs.10,58,34,090/-, the AO vide his assessment order dated 24.03.2022 accepted the income returned and in particular the Long Term Capital Gain returned of Rs. 10,58,34,090/-. As per the computation sheet dated 24.03.2022, the income returned by the assessee was accepted by the AO and aggregate income tax liability was quantified by the AO as at Rs.2,50,04,078/-. After adjusting the prepaid taxes, the AO had computed refund



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payable to the assessee of Rs.18,39,191/-. The same relevant computation is reproduced below for ready reference: -

41= (37 +38+39+40)	
Aggregate Income Tax Liability	2,50,04,078
42= (36 +41)	
Pre-paid taxes	
TDS	13,71,477
TCS	0
Advance Tax	2,54,71,792
Self Assessment Tax	0
Regular Tax Paid	0
Total Taxes Paid	2,68,43,269
48= (43+44+45+46+47)	
Tax Payable/Refund	
Amount Payable/Refund Amount	-18,39,191
49=(42-48)	
Interest u/s 244A on current amount	0
Interest u/s 244A(1A)	0
Total amount payable/Refund Amount	-18,39,191
52=(49+50+51)	
Refund Already Issued (incl. interest u/s 244A and interest u/s 244A(1A) if any)	0
Balance Amount Payable/Refundable (incl Provisional interest u/s 244A till current order and interest u/s 244A(1A) if any)	
54=(52-53)	
Interst u/s 220(2) Charged (In Rs)	0
Amount Payable/Refundable	
56= (54 +55)	
Demand Identification no against original demand	NA
Demand Identification no against interest u/s 220(2)	NA

5.1 Thus, it is found that the AO has not made any disallowance of expenditure or added any new source of income thereby assessing an income higher than the returned income. In other words, there was no additions made to the income returned, entire tax liability of the assessee was seem to have been paid on or before 15.03.2015, details of taxes paid are as below:

Date	Detail of tax paid	Amount
-	TDS	Rs.13,71,478/-
11.03.2015	Advance Tax	Rs56,71,792/-
11.03.2015	Advance tax	Rs.56,71,792/-
11.03.2015	Advance tax	Rs.99,00,000/-
	Total	Rs.2,68,43,270/-



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5.2 From the above, it is found that the assessee had paid the entire tax due on or before 15.03.2015 and was entitled refund of Rs. 18,39,191/- by not filing the income tax return the assessee would have not got the refund due to it. It was because of the notice u/s 148 which was issued, the appellant assessee had come to know that it had not yet file the return which was inadvertent] missed out as the person who was entrusted with the job of filing the return is stated to have left the appellant company and consequently the appellant claimed the refund of Rs. 18,39,191/- which was originally not claimed by the appellant. If the intention of the appellant was to file inaccurate particulars or conceal particulars of income and consequently to reduce the tax liability, then levy of penalty for this intention of the appellant to reduce the tax liability can be considered as a reasonable cause. In this case, the assessee was not found to have concealed particulars of income which were later brought to tax by AO during the assessment proceedings, rather, it was appellant assessee who hitherto was not aware of the refund of excess taxes paid by it, had come to know about the inadvertent mistakes that had occurred and consequently claimed the refund. Thus, under these circumstances, it is found that there was never an income which was intentionally concealed by the appellant nor a tax liability which was reduced by furnishing inaccurate particulars. By not filing the return of income the appellant was found to be not seeking for the refund due to it, to the extent of Rs.18,39,191/-. Because the notice u/s 148 was issued, the appellant was able to file the return and claim the aforesaid refund and ultimately received the same. In other words, by not filing the income, the appellant was at loss due to it. Under these



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circumstances, the penalty levied is found to be inappropriate and therefore, by relying on the case laws submitted by the appellant assessee reproduced in the earlier paras, the penalty levied is hereby deleted.”

7. Aggrieved by the impugned action of Ld. CIT(A), the revenue has preferred this appeal and the assessee has filed the CO supporting the action of the Ld. CIT(A) as well as has raised certain legal issues in its ground (supra).

8. We have heard both the parties and perused the records. The Ld. CIT(A) has noted that the assessee had filed the return of income pursuant to the notice u/s 148 of the Act and the same has been accepted as such. And the AO had levied penalty mainly on the ground that the assessee *omitted* to file the return of income even within the extended period of time i.e. upto March, 2017. The Ld. CIT(A) took note of the crucial fact that the aggregate income tax liability was to the tune of Rs.2,50,04,078/- and that the assessee has already paid more taxes by way of (1) TDS to the tune of Rs.13,71,478/-, (2) advance tax to the tune of Rs.2,54,71,792/-. Thus, paid an amount of Rs.2,68,43,269/- before 11.03.2015 i.e. an excess of Rs.18,39,191/-. And only after the assessee had filed the return of income pursuant to the notice u/s 148 of the Act dated 31.03.2021, the assessee had sought refund of amount to the tune of Rs.18,39,191/-. From the aforesaid facts itself according to the Ld. CIT(A), it is discernable that the assessee had no intention to conceal its income, because the assessee



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had paid before 11.03.2015 tax due to the Government i.e. Rs.2,50,04,078/- and had infact paid surplus amount of Rs.18,39,191/-. In such a scenario, the Ld. CIT(A)'s action of deleting the penalty levied by AO for concealment of income is a plausible view and does not warrant any interference from our side. Therefore, the revenue appeal stands dismissed.

9. And since the action of the Ld. CIT(A) deleting the penalty has been confirmed. The legal issues raised by assessee in its cross-objection has become academic and is left open. Therefore, the appeal of the revenue and CO of the assessee stands dismissed.

10. In the result, the appeal of the revenue as well as CO of the assessee are dismissed.

Order pronounced in the open court on this 31/10/2023.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/10/2023.
Vijay Pal Singh, (Sr. PS)



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai