

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2939/MUM/2023
(Assessment Year: 2014-15)**

Global Enterprises,
101, 1st Floor, Lathiwala Apartment,
Shivdas Chapsi Road, Mazgaon,
Mumbai - 400010
[PAN: AAGFG9195C]

..... **Appellant**

Income Tax Officer,
Ward 20(1)(1), Mumbai,
Piramal Chambers, Parel,
Lalbaug, Mumbai - 400012

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Manish J. Sheth
For the Respondent/Department : Shri Prashant Mahajan

Date

Conclusion of hearing : 14.12.2023
Pronouncement of order : 19.12.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 30/06/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2014-15, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Penalty Order, dated 14/06/2017, passed under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:

- "1 *On the facts and in the circumstances of the case and in law, the Ld. Assessing Officer erred in imposing penalty under Section 271(1)(c) of the Income Tax Act, 1961 of Rs. 28,12,266/-.*
2. *On the facts and in the circumstances of the case and in law, the Ld. AO ought to have considered that the admission or rejection of a claim is a subjective exercise and whether a claim is accepted or rejected has nothing to do with furnishing of inaccurate particulars of income or conceal income. What is a correct claim and what is an incorrect claim is a matter of opinion. Raising a claim, even if it is ultimately found to be legally unacceptable, cannot amount to furnishing of inaccurate particulars of income. Mere making of the claim, which is not sustainable in law, by itself, will not amount to conceal or furnishing inaccurate particulars regarding income of the assessee as Hon'ble SC observed and confirmed in the case of CIT Vs. Reliance Petro Products Pvt. Ltd. [2010] 322 ITR 158 (SC).*
3. *The assessee craves Your Honour's leave to add, alter or amend or delete any of the above grounds."*

3. Appellant has challenged the levy of penalty of INR 28,12,266/- by the Assessing Officer under Section 271(1)(c) of the Act which has been confirmed by the CIT(A) leading to the filing of the present appeal.
4. Brief facts of the case are that for the Assessment Year 2014-15 assessment under Section 143(3) of the Act was framed on the Appellant vide order, dated 13/12/2016, at loss of INR 8,28,711/- after making addition of INR 91,01,164/-, being interest disallowed under Section 36(1)(iii) of the Act to the returned loss of INR 99,29,895/-. The Assessing Officer also initiated penalty proceedings and levied penalty of INR 28,12,266/ under Section 271(1)(c) of the Act, vide order dated 14/06/2017. Being aggrieved, the Appellant preferred appeal before CIT(A) which was dismissed vide order, dated 30/06/2023. Now the Appellant is before us in appeal against the aforesaid order of dismissal passed by the CIT(A).

5. The Ld. Authorised Representative for the Appellant appearing before us submitted that the Assessing Officer erred in imposing penalty under Section 271(1)(c) of the Act. The penalty notice issued under Section 274 read with Section 271(1)(c) of the Act was issued without deleting or striking off inapplicable part. He further submitted that, even otherwise, the penalty levied cannot be sustained as mere rejection of a claim does not result in automatic levy of penalty. It was further submitted that there was no loss of Revenue since the loss arising on account of deduction of interest claimed under Section 36(1)(iii) of the Act was not carried forward by the Appellant to the subsequent assessment year as the return for Assessment Year 2014-15 was filed after the period specified under Section 139(1) of the Act. Reliance was placed upon the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petroproducts Pvt. Ltd. : 322 ITR 158 (SC) and the judgment of Full Bench of Hon'ble Bombay High Court in the case of Mohd. Farhan A Shaikh Vs. DCIT, Central Circle-1, Belgaum : 434 ITR 1 (Bombay).
6. Per contra, the Ld. Departmental Representative submitted that the deduction claimed by the Appellant under Section 36(1)(iii) of the Act was patently wrong and therefore, the Assessing Officer was correct in levying penalty under Section 271(1)(c) of the Act. The Ld. Departmental Representative further submitted that the reliance upon judicial precedents was misplaced and placed reliance on the assessment order and penalty order to support his case. The Ld. Departmental Representative also pointed out that return for the Assessment Year 2016-17 was filed after the notice under Section 143(2) of the Act was issued to the Appellant for the Assessment Year 2014-15 on 27/07/2016.

7. We have heard the rival submissions, perused the material on record and considered the legal position. The full Bench of the Hon'ble Bombay High Court in the case Mohd. Farhan A Shaikh Vs. DCIT (supra) has held that a mere defect in the notice - not striking off the irrelevant matter, would vitiate the penalty proceedings. The relevant extract of the aforesaid judgment reads as under:

"Answers:

Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Section 271(1)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitate the penalty proceedings?

181. It does. The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the assessee. But that translates into action only through the statutory notice under section 271(1)(c), read with section 274 of IT Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a different statutory scheme that remains distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness." (Emphasis supplied)

8. A perusal of the Assessment Order, dated 13/12/2016, passed under Section 143(3) of the Act shows that in relation to initiation of the penalty proceedings Assessing Officer has, paragraph 3.3 of the Assessment Order, simply stated that 'penalty proceedings under Section 271(1)(c) of the Act read with Explanation thereto are initiate separately' without specifying whether penalty proceedings have been initiated for concealment of particulars of income or for furnishing

inaccurate particulars of income. Further, a perusal of the penalty notice, dated 13/12/2016, issued under Section 274 read with 271 of the Act placed before us shows that the aforesaid notice is in the nature of an omnibus show cause notice issued without deleting or striking off the inapplicable part. Therefore, respectfully following the judgment of the Full Bench of the Hon'ble Bombay High Court in case of Mohammed Farhan A Shaikh vs DCIT (supra), we delete the penalty of INR 28,12,266/- levied under Section 271(1)(c) of the Act. Thus. Ground No. 1 raised by the Appellant is allowed. Other contentions raised by both the sides, having been rendered academic, do not require adjudication. Accordingly, Ground No. 2 & 3 raised by the Appellant are dismissed as being infructuous.

9. In result, the present appeal preferred by the Appellant is allowed.

Order pronounced on 19.12.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 19.12.2023
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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