

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA No. 2791/Mum/2023
(Assessment Year: 2008-09)

Arvind Balkrishna Goregaonkar Flat No. B – 1305, Bhavya Heights, Katrak Road, N R Ram Mandir, Wadala (W), Mumbai-400 031	Vs.	The Income Tax Officer – 26(1)(2) 706, C-11, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai -400 051
PAN/GIR No. AAIPG 6212 A		
(Assessee)	:	(Respondent)
Assessee by	:	Dr. Rajendra Kumar Jain & Shri Kunal Lunawat
Respondent by	:	Shri Manoj Kumar Sinha
Date of Hearing	:	23.01.2024
Date of Pronouncement	:	24.01.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2008-09.

2. The assessee has challenged the penalty levied by the Id. Assessing Officer ('A.O.' for short) u/s. 271(1)(c) of the Act and upheld by the Id. CIT(A) along with the other legal ground.

3. The brief facts of the case are that the assessee being practicing Orthopedic Doctor filed his return of income dated 31.07.2008, declaring total income at Rs.5,78,720/- and

the same was processed u/s. 143(1) of the Act. The assessee's case was reopened vide notice u/s. 148 of the Act dated 26.03.2013 for the reason that based on the search and survey action u/s. 132 of the Act dated 25.11.2009 in Mahasagar Group of cases, Shri Mukesh Choksi the key person of the group had declared that numerous persons were beneficiaries to the accommodation entries provided by the said group and the assessee was one among the list of beneficiaries, who had availed bogus long term capital gain amounting to Rs.15,77,033/- during the year under consideration.

4. The Id. Assessing Officer ('A.O.' for short) made an addition of the impugned amount as income from undisclosed source for the sale of scrip of M/s. Cable Corporation of India Ltd. The Id. A.O. also initiated penalty proceedings u/s. 271(1)(c) of the Act and vide order dated 27.03.2018 levied penalty of Rs.4,55,872/- being 100% of the tax which was sought to be evaded.

5. The assessee was in appeal before the first appellate authority where the Id. CIT(A) upheld the penalty levied by the Id. A.O.

6. Aggrieved further the assessee is in appeal before us, challenging the impugned penalty.

7. The learned Authorised Representative ('Id. AR' for short) for the assessee elaborated on the legal ground raised in the present appeal which challenges the notice u/s. 274 r.w.s. 271(1)(c) of the Act dated 27.02.2014 on the ground that the Id. A.O. has failed to strike off the irrelevant limb as to whether the impugned notice was for concealment of particulars of income or for furnishing of inaccurate particulars of

income. The ld. AR relied on the decision of the Hon'ble Apex Court in the case of *CIT vs. Reliance Petro Products Pvt. Ltd.* [2010] 11 SCC 762 (SC) along with various other decisions.

8. The learned Departmental Representative ('ld.DR' for short), on the other hand, had nothing to controvert the same and supported the order of the lower authorities by stating that the ld. A.O. has mentioned the relevant limb for which penalty proceeding is initiated in the assessment order.

9. We have heard the rival submissions and perused the materials available on record. It is evident that the impugned notice dated 27.02.2014 issued by the ld. A.O. is faulted for the reason of non striking of the irrelevant limb. On perusal of the impugned notice, we agree with the contention raised by the ld. AR. The issue of non striking off of the relevant limb is no more *res integra* and is a settled proposition of law where the various courts including the Hon'ble Jurisdictional High Court has held that the non striking off the irrelevant limb would *per se* vitiate the penalty order passed by the ld. A.O. It is also reiterated in various decisions that the said defect is not a curable defect u/s. 292B of the Act. In the present case in hand, there is no iota of doubt that the ld. A.O. has miserably failed to follow the mandatory requirement of striking off the irrelevant limb as to whether the notice u/s. 274 r.w.s. 271(1)(c) of the Act was for concealment of particulars of the assessee's income or a case where the assessee has furnished inaccurate particulars of such income. The intention of the legislature is to apprise of the assessee as to the grounds of the penalty proceeding which would nevertheless facilitate the assessee

to contend the said proceeding. This cannot be done with by the Id. A.O. as a mere procedural formality and, therefore, vitiate the penalty order in toto.

10. From the above observation, we deem it fit to delete the impugned penalty levied by the Id. A.O. and upheld by the Id. CIT(A).

11. As we have allowed the assessee's appeal on ground no. 3 which is the legal ground, the other grounds on the merits require no adjudication.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 24.01.2024.

Sd/-

(B R Baskaran)
Accountant Member

Mumbai; Dated : 24.01.2024
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai