

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUZ RAHMAN, AM

आयकर अपील सं/ I.T.A. No. 3268/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. Titan Laboratories Pvt. Ltd. A/01-GF & A/101 Plot No. 120, Anand Bhavan Road, Spectrum Building, RB Mehta Marg, Tilak Road, Ghatkopare (E), Mumbai-400077.	बनाम/ Vs.	ACIT, Circle-14(3)(1) Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCT0509Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Ravindra Poojari	
Revenue by:	Shri P. D. Chougule (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 23/01/2024

घोषणा की तारीख /Date of Pronouncement: 29/01/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), Delhi dated 30.08.2023 for the assessment year 2010-11.

2. The main grievance of the assessee as discernable from perusal of grounds of appeal is against the action of the Ld. CIT(A) confirming the penalty levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961, Act (hereinafter "the Act") to the tune of Rs.14,88,214/-.

3. The assessee has challenged the penalty levied by AO u/s 271(1)(c) of the Act by urging that the notice proposing penalty issued by the AO dated 28.03.2013 u/s 274 r.w.s 271 of the Act is bad in law since assessee has been called upon to defend both faults for non-levy



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of penalty. For examining the contention, we have perused the copy of the notice which is found placed at page no. 49 of PB. On perusal of the same it reveals that AO has not stricken down the in-applicable portion of the notice viz as to whether the notice (proposing penalty) was issued against the assessee for (i) *have concealed the particulars of your income* (ii) *or for furnishing inaccurate particulars of such income*. Since we note that both the faults have been spelled out without striking down the in-applicable faults on which assessee has been put on notice for levy of penalty u/s 271(1)(c) of the Act, we find that assessee was in the dark as to what fault it has committed for which the AO proposed to levy penalty; and since both faults figured in the notice, assessee was handicapped in defending/explaining against the proposed penalty. Therefore, since show-cause notice itself does not spell out clearly as to what fault assessee is being proceeded against for levy of penalty, the notice itself is bad in law, and consequently the penalty levied is vitiated. In this context, we find that same issue has come up for consideration before the Full bench of the Hon'ble Jurisdictional High Court in the case of Mohd. Farhan A. Shaikh Vs. DCIT (2021) 434 ITR 1 (Bombay) dated 11.03.2021 wherein their Lordships has held that the show cause notice issued prior to levy of penalty without specifying the fault/charge against which the assessee would vitiate the penalty itself. And thus the Hon'ble Full Bench of the High Court upheld the view of the division bench order in the case of PCIT Vs. Goa Dourado Promotions (P.) Ltd. (Tax Appeal No.18 of 2019, dated 26.11.2019) and held that the contrary view taken by another division bench in the case of CIT Vs.



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Smt. Kaushalya (1995) 216 ITR 660 (Bom) does not lay down the correct proposition of law.

4. Since we find that the specific fault/charge against which the assessee was called upon to explain vide the notice dated 28.03.2013 did not explicitly convey to the assessee for which fault/charge the assessee is being proceeded against, therefore, the show cause notice is found to be defective/invalid, and therefore it is held to be bad in law. For doing that we rely also on the decision of the Hon'ble Karnataka High Court in the case of CIT vs Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 (Kar) and the Department's SLP against it has been dismissed by the Hon'ble Supreme Court. We also find that Hon'ble Karnataka High Court in the case of CIT Vs. SSA's Emerald Meadows, reported in (2016) 73 taxmann.com 241 (Kar) endorsed the same view in Manjunatha Cotton and Ginning Factory (supra) and held as under:-

“3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short ‘the Act’), to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565/218 Taxman 423/35 taxmann.com 250(Kar). 4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of



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law arises in this appeal for determination by this Court. The appeal is accordingly dismissed.”

5. Respectfully following the judicial precedents as well as the binding decision of the Full bench decision of the Hon'ble jurisdiction High Court's in the case of Mohd. Farhan A. Shaikh (supra), we direct the deletion of the penalty levied in this case.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 29/01/2024.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

Mumbai; Dated 29/01/2024.
Vijay Pal Singh, (Sr. PS)

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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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