

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE [VIRTUAL HEARING]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND

SHRI G D PADMAHSHALI, ACCOUNTANT MEMBER

I.T.A.No.1452/PUN./2023 [E-APPEAL]
Assessment Year 2016-2017

Shri Datta Narayanrao Chapke, AT Kanteshwar Post, Kanteshwar Taluka, Purna – 431 511 Maharashtra. PAN AAXPC3985H	vs.	ACIT, Circle, Aaykar Bhavan, Near TV Centre, Srivaldi Road, Jalna – 781 005. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri Ramnath P Murkude

Date of Hearing :	08.03.2024
Date of Pronouncement :	12.03.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2016-17, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1058171954(1), dated 23.11.2023, involving proceedings u/s. 271(1)(c) of the Income Tax Act, 1961 (in short "the Act").

Case called twice. None appears at assessee's behest. He is accordingly proceeded ex-parte.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *"On the facts and in the circumstances of the case and in law lower authorities have erred in confirming the penalty of*

Rs.4,86,665/- without specifying correct charge for levy of penalty, as per Assessment order and notice of penalty, it is initiated for furnishing inaccurate particulars of income and in the final penalty order same is levied for concealment of income in penalty order.

2. On the facts and in the circumstances of the case and in law lower authorities have erred in confirming the penalty of Rs.4,86,665/- levied under section 271(1)(c) of IT Act on the estimated disallowance of Rs.15,90,410 being estimated disallowance out of the total labor charges, since the disallowance is made on adhoc basis, the entire penalty deserves to be deleted.

3. Your appellant prays for deletion of entire addition. Your appellant craves for to add, alter amend, modify, delete any or all grounds of appeal before or during the course of hearing.”

3. Mr. Murkunde vehemently argued that the NFAC herein has rightly affirmed the Assessing Officer's impugned action levying sec.271(1)(c) penalty of Rs.4,86,665/- vide following detailed discussion :

3. Determination

3.1. During the appellate proceedings, on perusal of the penalty order it was seen that the Assessing Officer has imposed a penalty of Rs.4,86,665/- u/s 271(1)(c) of the Act for concealment of income of Rs.15,90,410/-. The AO imposed a penalty for the lack of plausible explanation by the assessee during the penalty proceedings.

3.2. During the appellate proceedings, in response to the notices issued the appellant furnished its written submission, which was perused. However, it does not contain a valid explanation for the concealment of particulars of income. In the penalty order, the Assessing Officer has discussed the ratio of decisions by ITAT, Kolkata D Bench in the case of Mcleod Russel (i) Ltd, Vs ACIT and Hon'ble Delhi High Court in the case of Kalindi Rail Nirman Engg. Ltd Vs CIT and Hon'ble Madras High Court in the case of S Krishnaswamy & Sons Vs CIT. I find the ratio of the judgements cited by AO applicable to the facts of the case. The reliance of the appellant on various judgements in the written submission is not found to apply to the facts of the present case. The appellant has relied upon the jurisdictional ITAT order in the case of ACIT vs G.M. Finance & Trading Co. This decision was perused and found that it deals with the issues of penalty wherein different revenue authorities

adopt different rates of land. The facts of the present case are distinguishable. Hence, it is not relevant for the instant case. The decision of the Apex Court in the case of CIT vs Reliance Petroproducts is also not relevant to the facts of the instant case as the appellant had not even produced the respective ledgers in support of the expenditure claimed which he was specifically asked to do. This decision is applicable in a case where the assessee produces the supporting evidence and AO does not accept it. For the sake of easy reference, the relevant portion of the penalty order is reproduced as follows:

"In the instant case, the assessee had not furnished ledger account, labour register, muster roll, presently register and other relevant information required by the assessing officer. Failure on the part of the assessee led the A.O. to estimate the disallowance of labour expenses @ 20% of Rs. 6,05,01,325/-, which led to addition of Rs. 1,21,00,265/-."

Therefore, A.O. had during assessment proceedings clearly established that assessee was falsifying books of account by booking bogus expenditure under the head labour expenses for which no credible evidence could be produced during the assessment proceedings. Further, assessee could not rebut the finding given by the A.O. before the CIT (A), who after considering the material gathered by the A.O. came to the conclusion that there was leakage in the labour expenditure account and sustained addition of Rs. 15,90,410/-."

3.3. The issues were considered. The penalty order and relevant provisions of law were carefully perused. From the penalty order it is apparent that the appellant could not provide a satisfactory explanation regarding facts material to the computation of total income either during the assessment proceedings or penalty proceedings required as per the explanation-1 to section 271(1) of the Act, which reads as under:

"Explanation 1:- Where in respect of any facts material to the computation of the total income of any person under this Act, -

(A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the

Principal Commissioner or Commissioner to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bonafide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,

then, the added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.”

In the case of Mak Data P Ltd 306 ITR (SC), it has been held that explanation 1 of 271(1)(c) raises a presumption of concealment, when a difference is noticed by the A.O. between reported and assessed income. The burden is then on the assessee to show otherwise by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise. The question is whether the assessee has offered any explanation for the concealment of particulars of income. But, in the instant case, the appellant failed to explain the concealment of income during the penalty proceedings. Because of the above, I find no infirmity in the penalty order passed by the Assessing Officer. Hence, the penalty order u/s 271(1)(c) of the Act is hereby confirmed. As a result, the above Ground of appeal is dismissed.

4. We have perused the assessee's pleadings and considered the Revenue's foregoing vehement submissions. We find no substance in the Revenue's impugned stand supporting the penalty herein relating to estimation of labour as well as other miscellaneous and sub-contract expenses involving varying sums. Mr. Murkunde could hardly dispute the clinching fact that the Assessing Officer's assessment dated 28.12.2018 *inter alia*, had disallowed the assessee's sub-contract and labour charges' claim at uniform estimated rates of 20% thereby accepting the remaining claim of 80% in principle without specifying the corresponding parties concerned. We are afraid that such a penal action of an

estimated disallowance would hardly be sustainable in law going by settled legal position as per *CIT Vs. Reliance Petro Products (2010) 322 ITR 158 (SC)*. Their lordships' have settled the law long back that each and every disallowance/addition in quantum proceedings does not *ipso facto* attract the impugned penalty provision. We draw strong support therefrom to delete the impugned penalty of Rs.4,86,665/-. Ordered accordingly.

5. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 12.03.2024.

Sd/-
[GD PADMAHSHALI]
ACCOUNTANT MEMBER
Pune, Dated 12th March, 2024
VBP/-
Copy to

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "A" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.