

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE "SMC" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.Nos.1447, 1401 & 1402/PUN./2023 [E-APPEALS]
Assessment Years 2016-2017, 2017-2018 & 2018-2019

Sunil Chunilal Kumavat, N 53-VE-11-3, Sai Niwas, Patil Nagar, Trimurti Chowk, 5 th scheme, CIDCO, Nashik - 422008 Maharashtra. PAN ABUPK4746Q	vs.	The Income Tax Officer, Ward-2(1), Kendriya Rajaswa Bhavan, Gadkari Chowk, Agra Road, Nashik. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri Manish Mehta

Date of Hearing :	21.03.2024
Date of Pronouncement :	22.03.2024

ORDER**PER SATBEER SINGH GODARA, J.M. :**

These assessee's three appeals, arise against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's as many Din and Order Nos.ITBA/NFAC/S/250/2022-23/1044988054(1); 1044988235(1) and 1044988211(1); all dated 27.08.2022, involving proceedings u/s.271(1)(c) [for A.Y.2016-2017]; and sec.270A [for latter A.Ys. 2017-2018 and 2018-2019] of the Income Tax Act, 1961 (in short "the Act"); respectively.

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

2. Mr. Mehta vehemently argued during the course of hearing that both the lower authorities have rightly levied the

impugned penalty(ies) of Rs.93,900/-; Rs.1,18,464/- and Rs.1,61,360/-, assessment year-wise, respectively, in assessee's hands after finding him to have raised bogus claim(s) of sec.80C deduction(s), involving varying sums.

3. I have given my thoughtful consideration to the assessee's pleadings and Revenue's foregoing vehement contentions. I find no reason to sustain either one of these three penalties. This is for the precise reason that the Assessing Officer's sec.271(1)(c) order in the first and foremost assessment year 2016-17 had concluded that the assessee's bogus claim under sec.80C deduction(s) is an instance of "furnishing inaccurate particulars of income" in para-iii pages 7 to 8 in the NFAC's order. Whereas it's impugned discussion in para.7.9 onwards holds it as a fit case for confirming the impugned penalty after having found the assessee having concealed his taxable income. I am of the view that such a deviation regarding applicability of the statutory twin "limbs" of "concealment of taxable income vis-à-vis furnishing of inaccurate particulars thereof "; is not sustainable in law in light of hon'ble jurisdictional high court's decision in Mohd. Farhan A. Shaikh vs. ACIT [2021] 434 ITR (1) (Bom.). The impugned penalty is deleted in very terms. The assessee succeeds in his instant first and foremost appeal ITA.No.1447/PUN./2023 for assessment year 2016-2017.

4. The outcome would be hardly any different in the assessee's latter twin appeals I.T.A.Nos.1401 & 1402/PUN./2023 for assessment years 2017-2018 & 2018-2019, respectively. The

Revenue could not dispute the clinching fact that although the learned lower authorities have levied 200% penalty(ies) in assessee's case going by sec.270A(8) on one hand; whereas they nowhere specify the corresponding limb(s) of "under-reporting of income in consequence of any mis-reporting" thereof; as prescribed sub-sec.(9) containing (a) to (f) clauses. Faced with this situation, I adopt stricter interpretation as per Commissioner of Customs (Imports), Mumbai vs. Dilip Kumar And Co. & Ors. [2018] 9 SCC 1 (SC) (FB) and conclude that these twin penalties for assessment years 2017-2018 and 2018-2019 also deserve to be deleted. Ordered accordingly.

5. These assessee's three appeals I.T.A.Nos.1447, 1401 & 1402/PUN./2023 are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 22.03.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 22nd March, 2024

VBP/-

Copy to

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

//By Order//

//True Copy //

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