

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)**

**ITA No. 4190/MUM/2023  
Assessment Year: 2011-12**

Unicorn Infoservices Pvt. Ltd.,  
Gala No. 45 6 7 & 8 SBI Prajakta  
CHS Opp Greater Bombay Bank  
J B Nagar Andheri (E),  
Mumbai-400059.

**PAN NO. AAACU 9136 A**  
**Appellant**

National Faceless Appeals  
Centre, New Delhi-110001.

**Vs.**

**Respondent**

Assessee by : Mr. Vickey Chedda/Mr. Jainam Gala  
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 02/05/2024  
Date of pronouncement : 06/05/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 25.09.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2010-11 in relation to penalty under section 271(1)(c) of the Income-tax Act 1961 ( in short the ‘Act’). The relevant grounds raised by the assessee are reproduced as under:



1. *The Learned Commissioner of Income Tax, (Appeals), has erred by with regards to levying of penalty of Rs. 3,90,000/- u/s 271(1)(c) of the Income Tax Act, 1961 for concealing particulars of income.*

2. Before us, the assessee has also filed a copy of the additional grounds raised, which is reproduced as under:

1. *The Learned Commissioner of Income Tax, (Appeals), erred in law and on facts in confirming penalty u/s.271(1)(c) of the Income Tax Act, 1961; levied by the learned AO, without appreciating that, the learned **AO has not mentioned any specific charge or limb for initiating penalty** u/s.271(1)(c) of the Income Tax Act, 1961 in assessment order.*

2. *The Learned Commissioner of Income Tax, (Appeals), erred in law and on facts confirming penalty u/s.271(1)(c) of the Income Tax Act, 1961 levied by the learned Assessing Officer, without appreciating that, the notice u/s.274 r.w.s.271(1)(c) dated 29/11/2018, **refers to both the limbs of section 271(1)(c) of the Income Tax Act, 1961.***

3. *The Learned Commissioner of Income Tax, (Appeals), erred in law and on facts by taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.*

3. Briefly stated facts of the case are that in the case no return of income was filed for the year under consideration. The reassessment proceedings were initiated by way of issue of notice u/s 148 of the Act but no return of income was filed by the assessee in response to that notice also. In the reassessment completed, the Assessing Officer made addition of Rs.18,00,000/- for receipt of rent from M/s SMC Insurance Brokers Pvt. Ltd. No further appeal was preferred by the assessee, therefore, the Assessing Officer initiated penalty invoking section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') and vide impugned order dated 30.05.2019, he levied the penalty equivalent to 100% of the tax evaded which was worked to Rs.3,90,000/-. The submission of the assessee summarised by the AO are reproduced as under:



“6. In response to the same, the assessee company vide letter dated 20.04.2019 has made submission which is kept on record and is not being repeated for the sake of brevity. The assessee company in its reply has emphasized on the following points:-

- i. The company has closed down and the directors have passed away, were untraceable and have resigned from the Board.
- ii. The past directors were not involved in operational management for the relevant assessment year.
- iii. Addition of rent income of Rs. 18,00,000/- has been accepted for peace of mind and to avoid further Litigation.

Apart from the above the assessee company has also relied upon plethora of decisions, which are part of the submission and the same is placed on record.”

3.1 The Id AO charged the assessee for concealing particulars of income and levied penalty invoking **Explanation -3** below the section 271 of the Act. The relevant part of the order of Assessing officer is reproduced as under:

“21. In spite of giving several opportunities, the assessee company has failed to file the return of income and show the above transactions. The assessee company was required to file the Return of Income, to show, the above income/receipts amounting to Rs. 12,60,000/- as income of the assessee and offer it for taxation. Hence **penalty u/s. 271(1)(c) r.w. its explanations (3) is clearly leviable in the instant case.**

22. I am satisfied that the assessee company has concealed the particulars of its income and penalty is leviable for the same. The calculation of penalty amount on income sought to be evaded is as under:

- i. Amount of income sought to be evaded: Rs. 12,60,000/-
- ii. Tax @ 30% + 3% EC on income sought to be evaded is Rs. 3,89,340/-
- iii. 100% of tax is Rs. 3,89,340/-.
- iv. 300% of tax is Rs. 11,68,020/-.”

3.2 The Ld. CIT(A) upheld penalty observing as under:

“7. I have considered the submission of the appellant carefully. The appellant company could not furnish anything in support of its contention that why the penalty u/s 271(1)(c) should have not been levied by the Id. AO. During the assessment proceedings, the Id. AO, after considering the facts of the case made addition of Rs. 18,00,000/- under the head Income from House Property. The appellant had accepted the addition



*and did not file appeal against it. Not filing of appeal against the addition or accepting the addition made the Id. AO during the assessment proceedings do not absolve the appellant company from levying of penalty u/s 271(1)(c). From the submission and acceptable of the appellant it transpires that the **appellant had suppressed its income by furnishing inaccurate particulars of income** during the assessment year under reference. Therefore, the penalty order passed by the Id. AO u/s 271(1)(c) deserves to be upheld and sustained. Accordingly, ground no. 1 of the appeal is dismissed and not allowed.”*

4. Before us, referring to the regular grounds, the Ld. counsel for the assessee submitted that there was a bona fide reason for non-filing of the return of income in response to the notice u/s 139(1)/148 of the Act. He submitted that business operations of the company were closed down and the Board of Directors at the time of the closure comprised of Mr. Deepak Raichand Shah and Mr. Harish Dhanji Bhanderi of which Mr. Deepak Shah has passed away and Mr. Harish Bhanderi was untraceable whereas the past director i.e. Kalpesh Shah, Mr **Chintan Bharat Pandhya**, Lopesh Vora and Manish Sawant had already resigned from the Board of the assessee company. The company was ‘strike’ off from the record of Ministry of Company Affairs (MCA) portal. The Id Counsel submitted that during the course of reassessment proceedings , a show cause notice was served by the AO on the address of ‘Mr Chintan Bharat Padhya’ for the first time on 16/11/2018 and before he could understand the queries raised and contact with other erstwhile directors for responding, the Assessing officer passed the assessment order on 27/11/2018. The Ld. counsel for the assessee produced a copy of the affidavit by ‘Shri Kalpesh Shah’ ( i.e. who was authorized to represent the case of the assessee )



before the Ld. CIT(A). In said affidavit, it is submitted that due to non-availability of the 'password' for the Income-tax Portal and not aware of the e-mail ID or mobile number registered on the Income-tax portal, the assessee could not comply the notices of the Income-tax department. It is further mentioned in affidavit that the address mentioned in the notices was also no longer belonging to the company but to avoid litigation and to buy mental peace, the assessee company accepted and paid the demand raised in the assessment order.

5. On the contrary, the Ld. Departmental Representative (DR) submitted that assessee has failed to justify the bonafide reason for not filing of return of income, therefore penalty has been validly levied of the Assessing Officer and sustained by the Ld. CIT(A).

6. We have heard rival submission of the parties and perused the relevant material on record. The penalty in the case has been levied by the AO invoking deeming provisions of Explanation-3 below section 271(1)(c) of the Act for charges of concealing particulars of its income. However, the Ld. CIT(A) has sustained the penalty for furnishing inaccurate particulars of the income. Therefore, there is a diversion in the charges under which the penalty has been sustained by the Ld. CIT(A). Further, we find that as per Explanation-3 below the section 271(1) of the Act if the assessee fails to submit return of income u/s 139 of the Act without reasonable cause within the period prescribed u/s 153(1) of the Act



despite being taxable income, then, the assessee is deemed to have concealed the particulars of income. The relevant Explanation-3 is reproduced as under:

*“Explanation 3.—Where any person fails, without reasonable cause, to furnish within the period specified in sub-section (1) of section 153 a return of his income which he is required to furnish under section 139 in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (i) of sub-section (1) of section 142 or section 148 and the Assessing Officer or the [Joint Commissioner (Appeals) or the] Commissioner (Appeals) is satisfied that in respect of such assessment year such person has taxable income, then, such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his income in respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice under section 148.”*

7.1 We find that in the instant case, the assessee has explained the circumstances as mentioned above under which return of income could not be filed u/s 139 of the Act within the time limit prescribed under section 153(1) of the Act. The Id Counsel has submitted that assessment order has been passed within a period of 11 days of service of show cause notice for first time. Further, a copy of message received from Income-tax Department regarding difficulty faced on income-tax portal, is evident from message extracted below:

*“DONOTREPLY@incometaxindiaefiling.gov.in<DONOTREPLY@incometaxindiaefiling.gov.in*

*To:khconsultants@yahoo.co.uk  
14 Feb at 16:44*

*Dear Taxpayer,*



Greetings from e-Filing Helpdesk.  
e-Filing Request Number 6627104709 is Resolved.

*Issue Description:*

On 11-02-19 02:43 PM, kalpesh shah wrote: Dear Sir/Madam, In reference to the e - filing request no - 6621251154, We would like to state that in case of M/s Unicorn Infoservices Private Limited (PAN: AAACU9136A) we are unable to login on the e-filing portal of Income Tax Detailed reasoning regarding the same is attached hereunder For providing the solution you can mail us at :

hiren\_sanghvi\_ca@yahoo.co.in, khconsultants@yahoo.co.uk Or Contact CA Ekta Gala: 9137728988 Kindly provide the solution at earliest so that necessary actions can be initiated find the enclosure. Regards, Hiren Sanghvi & Associates 314, Jogani Industrial Estate, S.B. Marg, Dadar(W), Mumbai-400028. Tel no.022-66618933, 022-24378933 022-24384848. 022-66625362 <http://hirensanghviassociates.icai.org.in>

*Resolution Inputs:*

Dear Taxpayer Your request for password reset is presently not approved for the following reasons. 1. All required documents are not submitted. 2. In the letter submitted it is stated that the company has closed down its business. The status of the Company is also shown as "Strike Off" till date as verified from the MCA portal.

As the company has closed down its business, the user can register as Representative Assessee'. In this connection, please go through the help menu of filing portal to register as 'Representative Assessee ' if the business is discontinued or closed. Regards e-filing Team

Note: This is a system-generated e-mail. Please do not respond to this mail.

If the Resolution provided is not satisfactory, you may please re-open the request after logging into **<https://incometaxindiaefiling.gov.in.>**

7.2 In our opinion, in view of difficulty in filing online return / appeal due to technical reasons, there exit a 'reasonable cause' in not filing the return of income within the limitation prescribed , therefore, no penalty should be imposed in such circumstances. The penalty levied by the Assessing Officer and sustained by the Ld. CIT(A) is accordingly cancelled in view of Explanation -3 below



section 271 of Act. In the result, the regular ground raised by the assessee is allowed. Since, we have already cancelled the penalty, the additional grounds raised by the assessee are merely rendered academic and therefore, we are not adjudicating upon the same.

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

**Order pronounced in the open Court on 06/05/2024.**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 06/05/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**