

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.578/PUN/2024

निर्धारण वर्ष / Assessment Year : 2016-17

Sai Homes, 310-313, Persipolis Cooperative Society, Plot No.74, Sector-17, Vashi, Navi Mumbai 400 705 Maharashtra PAN : ABAFS3226K	Vs.	ACIT, Panvel Circle, Panvel
Appellant		Respondent

Assessee by : None
Revenue by : Shri B.S. Rajpurohit
Date of hearing : 20.05.2024
Date of pronouncement : 20.05.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the CIT(A), Pune-11 dated 30.01.2024 confirming the levy of penalty of Rs.39,92,450/- u/s.271(1)(c) of the Income-tax Act, 1961 (hereinafter also as called 'The Act') for the assessment year 2016-17.

2. Brief facts of the case are as under :

The appellant is a partnership firm engaged in the business of Builders. The Return of Income for the A.Y. 2016-17 was filed on 17.10.2016 declaring Nil income. Against the said return of income, the assessment was completed by the Assessing Officer (AO) vide

order dated 21.11.2018 passed u/s.143(3) at a total income of Rs.2,40,163/- after allowing deduction u/s.80IB(10) at Rs.2,03,24,769/-, however, assessed book profits u/s.115JC of the Act at Rs.2,05,64,932/-. The AO also initiated the penalty proceedings u/s.271(1)(c) in respect of addition of interest income at Rs.2,40,163/- assessed under the "Income from other source". During the course of assessment proceedings, based on the submissions of the assessee that additional income of Rs.1,80,91,318/- which was recognised in the previous year relevant to the assessment year 2012-13 be assessed for the year under consideration, assessed the same to tax for the assessment year under consideration. It appears that the assessment order had attained finality. The AO vide order dated 29.05.2019 levied penalty of Rs.39,92,450/- u/s.271(1)(c) of the Act in respect of the additional income of Rs.1,80,91,318/- which was offered to tax during the course of assessment proceedings, by holding that the appellant firm is guilty of furnishing of inaccurate particulars of income.

3. Being aggrieved, an appeal was before the CIT(A) contending that the penalty cannot be levied in respect of additional income offered to tax during the course of assessment proceedings and as well as on the income returned, inasmuch as, no satisfaction was recorded by the AO to initiate the penalty proceedings in respect of these items

of addition. However, the CIT(A) confirmed the levy of penalty by holding that there is no requirement under law to record the satisfaction to initiate penalty proceedings in respect of each item of addition.

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

5. When the appeal was called on, none appeared on behalf of the assessee despite due service of notice of hearing. Therefore, I proceed to dispose of the matter after hearing the ld. Sr. DR.

6. On the other hand, the ld. Sr.DR placing reliance on the orders of the authorities below supports that it is a fit case for levy of penalty.

7. I heard the ld. Sr.DR and perused the relevant material on record. The solitary issue in the present appeal is with regard to levy of penalty u/s.271(1)(c) of the Act. The pre-requisite condition for levy of penalty for furnishing inaccurate particulars of income is the satisfaction of the AO to initiate the penalty proceedings u/s.271(1)(c) of the Act. It is well settled in view of the Supreme Court decisions in *CIT Vs. S.V. Angidi Chettiar (1962) 44 ITR 739 (SC)* and *D.M. Manasvi Vs. CIT (1972) 86 ITR 557 (SC)*, that power to impose penalty under section 271 of the Act depends upon the satisfaction of the Assessing Officer in the course of the proceedings under the Act. It cannot be exercised if he is not satisfied and has not recorded his

satisfaction about the existence of the conditions specified in clauses (a), (b) and (c) before the proceedings are concluded. Same position was reiterated by the Full Bench of Hon'ble Delhi High Court in the case of *CIT Vs. Rampur Engineering Co. Ltd. and others* (2009) 309 ITR 143 (Delhi) (FB).

8. On mere perusal of the assessment order, it would be evident that the AO had recorded the satisfaction to initiate the penalty proceedings u/s.271(1)(c) of the Act for alleged offence of furnishing inaccurate particulars of income, only in respect of addition of interest income of Rs.2,40,163/- by denying exemption u/s.80IB(10) of the Act. The AO had not recorded satisfaction in respect of additional income offered during the course of assessment proceedings, which was allowed as deduction u/s.80IB(10) of the Act. Further, we find that the addition was made on the basis of information furnished by the appellant itself. There is no finding by AO, as to which particulars filed by the appellant are found to be inaccurate. Therefore, in no case, the appellant can be held to be guilty of furnishing of inaccurate particulars of income. Therefore, the AO was not justified in levying penalty u/s.271(1)(c) of the Act in respect of the addition made on account of additional income offered during the course of assessment proceedings.

9. As regards the addition of interest income, it is crystal clear that it is a mere disallowance of claim for deduction u/s.80IB(10), which is unsustainable under law, it does not amount to furnishing inaccurate particulars of income as held by the Hon'ble Supreme Court in the case of *CIT v. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158*. There is no finding by the AO as to which particulars filed by the appellant are found to be inaccurate. In the circumstances, I am of the considered opinion that it is not a fit case for levy of penalty u/s.271(1)(c) of the Act, accordingly direct the AO to delete the penalty of Rs.39,92,450/-.

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

Order pronounced on this 20th day of May, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 20th May, 2024.

Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT Central, Pune
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.