

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.561/MUM/2024
Assessment Year: 2003-04

Milan Mahendra Securities Pvt. Ltd. 301A, 3 rd floor, Natar chambers, Nagindas Master Road, Fort, Mumbai – 400 023 (PAN : AABCM0778P)	Vs.	Deputy Commissioner of Income Tax – 4(3), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Rajiv Khandelwal, FCA
Revenue : Ms. Rajeshwari Menon, Sr.DR

Date of Hearing : 27.05.2024
Date of Pronouncement : 30.05.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1059052311(1), dated 26.12.2023 passed against the penalty order by the Deputy Commissioner of Income Tax – 4(3), Mumbai, u/s.271(1)(c) of the Income-tax Act(hereinafter referred to as the “Act”), dated 18.03.2014 for Assessment Year 2003-04.

2. Grounds taken by the assessee are reproduced as under:

“1. The Commissioner of Income-tax (Appeals) at the National Faceless Appeal Centre (NFAC) (hereinafter referred to as the CIT(A) erred in upholding the action of the Deputy Commissioner of Income-tax 4(3), Mumbai (hereinafter referred to as the Assessing Officer) in levying penalty of Rs 1,93,30,550 under section 271(1)(c) of the Act.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the levy of impugned penalty inasmuch as the CIT(A) has not appreciated the facts of the case in its entirety.

The appellants further, contend that on the facts and in the circumstances of the case and in law, the impugned notice dated 23.01.06 issued under section 274 r.w.s. 271 is a printed form of notice not specifying the charge brought against the appellants that is, whether it is for furnishing of inaccurate particulars of income or concealment thereof, and as such, the notice suffers from the virus of non-application of mind and hence, the impugned order of the CIT(A) confirming the levy of penalty is not tenable in law.”

3. Brief facts of the case as culled out from records are that assessee filed its return of income on 01.12.2003 reporting total loss at Rs.5,16,50,972/-. Assessment was completed u/s. 143(3) at a total income of Rs.9,49,150/- after making addition on account of various issues including operating expenses of Rs.3,44,289/-, interest paid to bank of Rs.5,22,52,832/- and interest payment to other of Rs.2,997/-. On the above additions/disallowances, case of the assessee travelled upto the Tribunal in ITA No.6880/Mum/2012 by which it was remanded back to the file of ld. CIT(A) vide order dated 02.09.2015, to dispose of the said appeal on merit. This set aside proceeding of the quantum appeal is pending before the ld. CIT(A) for disposal as confirmed by the ld. Counsel of the assessee in the course of hearing, before us.

3.1 Ld. Assessing Officer had initiated penal u/s.271(1)(c) on the above stated disallowances/additions. In the penalty proceedings, ld. Assessing Officer observed that since the disallowances have been confirmed by the ld. CIT(A), therefore it is clear that assessee filed inaccurate particulars of income resulting into concealment of income within the meaning of Section 271(1)(c). He thus, levied a penalty of

Rs.1,93,30,550/- at the rate of 100% of tax sought to be evaded. Aggrieved, assessee went in appeal before the ld. CIT(A).

3.2. Ld. CIT(A) dismissed the appeal of the assessee by observing that assessee had made failed to make any submissions in support of grounds of appeal raised before him. He also took note of various notices issued for hearing of the case but no submissions were made during the entire appellate proceedings. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, ld. Counsel for the assessee raised the legal issue by submitting that notice dated 23.01.2006, issued by the ld. Assessing Officer for penalty proceedings u/s.274 r.w.s. 271(1)(c) is a printed form of notice which does not specify the charge against the assessee as to whether it is for furnishing of inaccurate particulars of income or concealment of particulars of income. The said notice is a defective notice and hence penalty levied is not tenable in law.

4.1. On a specific query by the Bench on the status of quantum appeal before the ld. CIT(A) which was set aside by the Co-ordinate Bench, ld. Counsel submitted that it is pending for disposal. In view of this fact, the tax sought to be evaded for levy of penalty in the instant case is yet to attain finality irrespective of the legal issue raised as stated above. In the given set of facts and circumstances, we find it appropriate to remit the instant matter before the ld. CIT(A) for *denovo* adjudication after considering the disposal of quantum appeal. Assessee is at liberty to raise the legal issue at any stage as deem fit.

4.2. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the

file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 30 May, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 30 May, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai