

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

BEFORE SHIR PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 3547/Mum/2023

(A.Y: 2009-10)

ITO-41(2)(2), R.No.612, 6 th Floor, Kautilya Bhavan, BKC Bandra (E), Mumbai-400051.	Vs.	Jaiprakash Dhirajlal Barbhaya, 301, Mahavir Apt, Nahur Road, Sarvodaya Nagar, Mumbai-400080.
PAN/GIR No. : AGPPB9599J		
Appellant	..	Respondent

Appellant by :	Ms.Rajeshwari Menon.Sr.DR
Respondent by :	None

Date of Hearing	15.05.2024
Date of Pronouncement	16.05.2024

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/sec 271(1)(c) and u/sec 250 of the Act. The revenue has raised the following grounds of appeal:

1 "Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was right in law in deleting the penalty without appreciating the facts of the case and going

into the merits of the ignoring the fact that the penalty u/s 271(1)(c) of the Act was imposed and levied on the addition of bogus purchase where information was received from external sources in nature of law enforcement agencies i.e. Sales Tax Department of Govt, of Maharashtra."

2 "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in ignoring the fact that specifying both the limb, of section 271(1)(c) is only an inadvertent error committed at the end of the AO and thus cannot vitiate the penalty proceedings u/s 271(1)(c) of the Act."

3 "Without prejudice to the question of law as mentioned 2 above, whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that no cognizance of the notice dated 20.03.2018 can be taken wherein the AO had clearly specified the charge of penalty, i.e. furnished inaccurate particulars of the income and thus cured the inadvertent error by the AO in the notice dated 21.03.2014."

2. The brief facts of the case are that, the assessee company is engaged in the business as reseller in aluminum extrusion. The assessee has filed the return of income for the A.Y 2009-10 on 30.09.2009 disclosing a total income of Rs.4,99,600/- and the return of income was processed u/sec 143(1) of the Act. Subsequently the Assessing Officer (AO) has received information from DGIT (Inv) that the assessee

has obtained bogus purchases bills as per the Maharashtra sale tax department website from 13 parties aggregating to Rs.4,84,33,878/-. The AO has reason to believe that the income has escaped assessment and issued notice u/sec 148 of the Act, further the reasons for reopening of the assessment were also provided to the assessee. The assessee has filed a letter dated 08.01.2014 to treat the original return of income filed earlier as due compliance. Further the AO has issued notice u/sec 143(2) and u/sec143(2) of the Act along with questionnaire. Incompliance to the notices, the Ld. AR of the assessee appeared from time to time and filed the requisite details. Whereas the AO to test check the genuineness of the transaction has issued notice u/sec 133(6) on the parties and the some notices were returned un served and in other cases no compliance by the parties. Hence the AO has called for the additional details and issued show cause notice. The assessee has filed the reply along with the available material information but the AO was not satisfied with the explanations and details and observed that the genuineness of the transactions

could not be established and made addition of bogus purchases u/sec 69C of Rs.4,84,33,878/-, similarly made addition of expenses claimed of Rs. 42,286/- and assessed the total income of Rs.4,89,76,760/- and passed the order u/sec143(3) r.w.s 147 of the Act dated 21.03.2014.

3. Subsequently the AO has initiated penalty proceedings u/s 271(1)(c) of the Act, whereas in the penalty proceedings the assessee was issued show cause notice and explanations are filed. Further it was brought on record before the AO in the penalty proceedings that, the assessee has filed an appeal against the quantum addition and the CIT(A) has granted partial relief, the AO considered the findings of the scrutiny assessment, submissions and the decision of the CIT(A) on the quantum addition and was not satisfied with the explanations and levied penalty of Rs.29,93,213/- and passed the order u/sec 271(1)(c) of the Act dated 05.03.2018.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), in the appellate proceedings the CIT(A) considered the submissions of the

assessee, provisions of law, findings of the CIT(A) in the quantum appeal and relied on the judicial decisions on the validity of notice and deleted the penalty and allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in deleting the penalty levied u/s 271(1)(c) of the Act irrespective of the fact that the assessee has furnished inaccurate particulars of income and also the technicalities of defective notice are devoid of merits and supported the order of the Assessing officer. None appeared on behalf of the assessee.

6. We heard the Ld. DR submissions and perused the material on record. The revenue has challenged the decision of the CIT(A), where the CIT(A) has erred in deleting the penalty considering the facts that the penalty notice issued is defective as the A.O. has not applied his mind and also non striking of charge in the penalty notice i.e. whether the charge is for concealment of income or furnishing of inaccurate

particulars of income. We find that the CIT(A) has dealt at Para 6 to 7,4 of the order and relied on the Honble Supreme Court, Honble High Court and Honble Tribunal decisions and deleted the penalty.

7. We find the Jurisdictional Honble High Court of Bombay in Mr.Mohd Farhan A Shaikh Vs. DCIT in Tax Appeal No. 51 to 57 of 2012 dated 11.03.2021. (2021) 125.taxmann.com 253 /434 ITR 1 (Bombay) has dealt on this disputed issue of not striking off charge in the penalty notice would vitiate the penalty proceedings. The Hon'ble High Court has made observations at page 56 as under;

180. One course of before us is curing a defect in the notice by referring to the assessment order, which may or not contain reason for the penalty proceedings. The other course of action is the prevention of defect in the notice – and that prevention takes just a tick mark. Prudence demands prevention is better than cure.

Answers:

Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Sec. 271(1)(c), does a mere defect in the notice – not striking off the irrelevant matter vitiate the penalty proceedings?

181. It does. The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or

otherwise, to launch penalty proceedings against the assessee. But that translates into action only through the statutory notice under Sec. 271(1)(c), r.w.s. 274 of the Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a deferent statutory scheme that remains distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.

182. More Particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee's favour.

8. We have considered the facts, circumstances and ratio of the decision of Honble High Court and are of the view that in the present case the CIT(A) has deleted the penalty as the A.O has not strike off the charge for levy of penalty for concealment of income or for furnishing of inaccurate particulars of income and the CIT(A) has also dealt on the facts, provisions of law and judicial decisions and passed a reasonable order. The Ld.DR could not controvert the findings of the CIT(A) on the disputed issue with any new cogent material or information to take different view. Accordingly, we do not find any infirmity in the order

of the CIT(A) in deleting the penalty levied u/sec 271(1)(c) of the Act and uphold the same and dismiss the grounds of appeal of the revenue.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 16.05.2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 16.05.2024

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//()

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आदेशानुसार/ BY ORDER,

(Asst. Registrar)

ITAT, Mumbai