

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1415/Mum./2024

(Assessment Year : 2010-11)

ITA no.1416/Mum./2024

(Assessment Year : 2011-12)

ITA no.1417/Mum./2024

(Assessment Year : 2014-15)

Lyka Labs Limited

Ground Floor- Spencer Bldg,

Forjett Street,

AK Marg, Mumbai-400036

PAN – AAACL0820G

..... Appellant

v/s

DCIT-2(2)(1)

Aaykar Bhavan, Maharshi Karve

Marg, Marine Line

Mumbai-400020

..... Respondent

Assessee by :Shri Jayesh Dadia

Revenue by :Shri Mirza Azhar Beig

Date of Hearing – 22/05/2024

Date of Order – 06/06/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 18/03/2024, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], which in turn arose from the penalty orders passed under section

271(1)(c) of the Act, for the assessment years 2010–11, 2011-12 and 2014-15.

2. Since all the appeals pertain to the same assessee involving a similar issue arising out of a similar factual matrix, therefore, as a matter of convenience, these appeals were heard together and are being decided by way of this consolidated order. With the consent of the parties, the assessee's appeal for the assessment year 2010-11 is taken up as a lead case. In all the appeals, the assessee has raised similar grounds. For reference, the grounds raised by the assessee in the appeal for the assessment year 2010-11 are reproduced as under:-

"1. The Ld. CIT(A) has erred in law and on the facts of the case in confirming action of assessing officer in levying the penalty of Rs.80,85,480/- u/s 271(1)(c) of the Act despite the show cause notice was invalid. The action is unjustified and unwarranted as the issue is covered by the decision of jurisdictional high court in case of Mohd Farhan Shaikh and Goa Coastal Resorts and Recreation Pvt. Ltd.

2. The Ld. CIT(A) has erred in law and on the facts of the case in confirming the action of assessing officer in levying penalty of Rs.80,85,480/-. The action is unjustified and unwarranted without prejudiced the penalty levied is excessive."

3. The solitary dispute raised by the assessee in all these appeals pertains to the levy of penalty under section 271(1)(c) of the Act.

4. The brief facts of the case, as emanating from the record, are: The assessee is engaged in the business of manufacture/dealer of pharmaceutical formulations/bulk drugs. For the assessment year 2010-11, the assessee filed its return of income on 27/09/2010 declaring a total loss of Rs.2,13,48,524 under normal provisions of the Act and book profit under section 115JB at Rs.(46,87,124). The return filed by the assessee was selected for scrutiny and

statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. Vide order dated 28/03/2013 passed under section 143(3) of the Act, the total income of the assessee was assessed at Rs.1,43,51,370.

5. Subsequently, the penalty order dated 30/03/2016 was passed by the Assessing Officer ("AO") under section 271(1)(c) of the Act, wherein a penalty of Rs.80,85,480, was levied. In the further appeal against the penalty order, the learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the levy of penalty under section 271(1)(c) of the Act. Being aggrieved, the assessee is in appeal before us.

6. During the hearing, the learned Authorised Representative ("*learned AR*"), inter-alia, submitted that the penalty in the present case has been levied without specifying the head under which the same has been levied. The learned AR by referring to the penalty notice dated 28/03/2013 issued under section 274 r/w section 271(1)(c) of the Act submitted that the AO has not specified whether the penalty has been levied for concealment of income or for furnishing inaccurate particulars of income. The learned AR in support of his submission placed reliance upon various decisions of the Hon'ble jurisdictional High Court including the decision of the Larger Bench of the Hon'ble jurisdictional High Court in Mohd. Farhan A. Shaikh v/s CIT, [2021] 434 ITR 1 (Bom.).

7. On the other hand, the learned Departmental Representative ("*learned DR*") vehemently relied upon the order passed by the lower authorities and submitted that the issue of alleged defect in notice issued under section 274

r/w section 271(1)(c) of the Act has recently been considered by the Hon'ble jurisdictional High Court in the Veena Estate (P) Ltd. v/s CIT, [2024] 461 ITR 483 (Bom.).

8. In his rebuttal, the learned AR submitted that the decision of the Hon'ble jurisdictional High Court in Veena Estate (P) Ltd. (supra) is factually distinguishable, as in the present case the issue as regards the defect in the notice issued under section 274 r/w section 271(1)(c) of the Act was also raised by the assessee in the first round of proceedings.

9. We have considered the submissions of both sides and perused the material available on record. In the present case, the AO initiated penalty proceedings under section 271(1)(c) of the Act and levied a penalty of Rs.80,85,480. From the perusal of the notice dated 28/03/2013 issued under section 274 r/w section 271(1)(c) of the Act, forming part of the paper book on page 1, we find that the AO did not strike-off any of the twin charges i.e., concealment of particulars of income or furnishing of inaccurate particulars of income. We find that the Larger Bench of the Hon'ble Jurisdictional High Court in Mohd. Farhan A. Shaikh (supra) held that the defect in notice by not striking off the irrelevant matter would vitiate the penalty proceedings. During the hearing, the learned DR placed reliance upon the recent decision of the Hon'ble jurisdictional High Court in Veena Estate (P) Ltd. (supra), wherein it was held that an alleged defect in notice issued to assessee under section 274 r/w section 271(1)(c) of the Act, in regard to which assessee had never raised an objection from very inception could not be permitted to raise in appeal before High Court in absence of any prejudice being caused. It is the plea of the

assessee that the issue as regards the defect in the notice has been raised by the assessee since the first round of appellate proceedings against the initiation of penalty under section 271(1)(c) of the Act.

10. From the perusal of the documents forming part of the paper book, we find that in the appeal against the penalty order dated 30/03/2016 passed under section 271(1)(c) of the Act before the learned CIT(A), the assessee specifically raised the submission regarding the defect in the notice issued under section 274 r/w section 271(1)(c) of the Act as the AO did not mention under which the limb penalty under section 271(1)(c) of the Act has been levied. Further, we find that the assessee also, inter-alia, placed reliance upon the decision of the Hon'ble jurisdictional High Court in Pr. CIT (Central) v. Goa Coastal Resorts and Recreation (P.) Ltd. [2020] 113 taxmann.com 574/272 Taxman 157 (Bom.) in support of its submission. However, we find that the learned CIT(A) vide order dated 28/02/2020 dismissed the appeal filed by the assessee and upheld the levy of penalty under section 271(1)(c) of the Act without dealing with the aforesaid submission of the assessee. In further appeal before the Tribunal, we find that the assessee again raised a ground that the penalty proceedings are bad in law on the basis that the show cause notice is defective. The coordinate bench of the Tribunal vide order dated 05/03/2021 passed in assessee's appeal in ITA No. 1682-1684/Mum./2020, for the assessment years 2010-11, 2011-12 and 2014-15, restored the matter to the file of the learned CIT(A) for fresh adjudication and for passing a speaking order on factual aspects. We find that being aggrieved by the Tribunal's order, the assessee filed an appeal before the Hon'ble jurisdictional High Court under section 260A of the Act, wherein again the assessee raised the legal issue and

submitted that the same is squarely covered by the decision of the Hon'ble jurisdictional High Court. The Hon'ble High Court, vide order dated 08/11/2023, passed in ITA (L) No. 1009, 1014, and 1029 of 2022, permitted the assessee to withdraw its appeal and further directed the learned CIT(A) to dispose of the assessee's appeals as early as possible. We further find that even in the second round of proceedings before the learned CIT(A), the assessee made its submission on the aforesaid jurisdictional aspect. However, as evident from the record, the learned CIT(A), vide impugned order, rejected the submission of the assessee on the basis that this issue was never specifically pressed by the assessee in its grounds of appeal and the statement of facts. Therefore, from the aforesaid factual matrix, we find merit in the submissions of the assessee that the issue as regards the defect in the penalty notice has been raised since the first round of appellate proceedings against the initiation of penalty under section 271(1)(c) of the Act. Accordingly, we are of the considered view that the decision of the Hon'ble jurisdictional High Court in *Veena Estate (P) Ltd. (supra)* does not support the plea of the learned DR in the present case, as the same has been rendered in a completely different factual matrix, where after 30 years the taxpayer sought to raise ground as regards the defect in notice issued under section 274 r/w section 271(1)(c) of the Act before the Hon'ble High Court for the first time.

11. Thus, in view of the facts and circumstances as noted in the foregoing paragraph, we are of the considered view that this issue is squarely covered by the decision of the Larger Bench of the Hon'ble Jurisdictional High Court in *Mohd. Farhan A. Shaikh (supra)*. Accordingly, respectfully following the aforesaid decision of the Hon'ble Jurisdictional High Court in *Mohd. Farhan A.*

Shaikh (supra), the penalty order passed under section 271(1)(c) of the Act for the assessment year 2010-11 is quashed.

12. We find from the documents placed on record in the paper book for the assessment years 2011-12 and 2014-15 that even in the subsequent years before us the assessee raised this legal plea since the first round of appellate proceedings against the initiation of penalty under section 271(1)(c) of the Act. Accordingly, respectfully following the aforesaid decision of the Hon'ble Jurisdictional High Court in Mohd. Farhan A. Shaikh (supra), the penalty order passed under section 271(1)(c) of the Act for the assessment years 2011-12 and 2014-15 are also quashed.

13. In the result, the appeal by the assessee for the assessment years 2010-11, 2011-12, and 2014-15 are allowed.

Order pronounced in the open Court on 06/06/2024

Sd/-
NARENDRA KUMAR BILLAIYA
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 06/06/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

True Copy

By Order

Assistant Registrar
ITAT, Mumbai