

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.944/PUN/2023

निर्धारण वर्ष Assessment Year : 2010-11

Shiv Shraddha Developer, Shop No.4 & 5, Satyam Arcade, Plot No.26, Sector-21, Komothe, Navi Mumbai 410210 Maharashtra PAN : AAWFS6157J	Vs.	ACIT, Circle-3, Kalyan
Appellant		Respondent

Assessee by : Shri Pramod Kumar Parida

Revenue by : Shri Sourabh Nayak

Date of hearing : 06.06.2024

Date of pronouncement : 07.06.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of National Faceless Appeal Centre (NFAC), Delhi dt. 26.05.2023 for the assessment year 2010-11.

2. Briefly, the facts of the case are that the appellant is a partnership firm engaged in the business of Builders and Developers. The Return of Income for the A.Y. 2010-11 was filed on 24.09.2010 declaring total income of Rs.28,82,630/-. Against the said return of income, the assessment was completed by the Assessing Officer (AO) vide order dated 28.03.2013 passed u/s.143(3) of the Act at a total income of

Rs.1,25,88,312/-. While doing so, the AO made addition of Rs.97,05,682/- disbelieving the purchases made from the parties enumerated in para 4 of the assessment order based on the information received from the Sales Tax Department of Govt. of Maharashtra. The AO further observed that the appellant firm had failed to produce the parties for verification. Therefore, the AO concluded that the purchases from the said parties were bogus and made addition as unexplained expenditure invoking the provisions of section 69C of the Act.

3. On appeal before the CIT(A)/NFAC, the Id. CIT(A)/NFAC had partly allowed the appeal by restricting the addition to the extent of Rs.82,24,247/-. It appears that the matter had attained finality as the appellant firm has chosen not to contest the addition before the Tribunal. While matter stood that the AO had proceeded with levy of penalty u/s.271(1)(c) of the Act vide order dated 30.03.2017 by holding that the appellant firm is guilty of furnishing inaccurate particulars of income rejecting the explanation that the claim made by the assessee is bonafide.

4. Being aggrieved by the above penalty order, an appeal was filed before the CIT(A) who vide impugned order confirmed the levy of penalty placing reliance on the decision of *Dharmendra Textile Processors & Others (2008) 306 ITR 277 (SC) and Shri K.P, Madhusudan Vs. CIT 251 ITR 99* etc.

5. Being aggrieved, the appellant is in appeal before us in the present appeal.

6. We heard both the sides and perused the relevant material on record. The issue in the present appeal is whether or not in the facts and circumstances of the case the AO was justified in levying penalty u/s.271(1)(c) of the Act in respect of the addition made u/s.69C of the

Act disbelieving the genuineness of the purchases made. On mere reading of the assessment order, it would be clear that the AO disallowed the purchases made for the failure on the part of the appellant firm to produce the parties who were stated to have supplied the material to the appellant firm. According to the AO, failure on the part of the appellant firm to produce the parties who were stated to have supplied the material to the appellant amounted to furnishing of inaccurate particulars of income, therefore proceeded to levy penalty u/s.271(1)(c) of the Act. There is no finding by the AO as to which particulars furnished by the assessee are found to be inaccurate. Further, it is settled position of law that even in the case of bogus purchases, only the profit element embedded therein should be added not the entire purchases. In the present case, it is not the case of the AO that the payments were made for the said bogus purchases. Therefore, we doubt the correctness of the invocation of provisions of section 69C of the Act. In any event, the law is very well settled that the finding recorded by the AO are relevant evidences to support the allegation of this concealment but this cannot be the foundation for holding guilty of concealment. The fiction created u/s.69C itself cannot be extended to penalty proceedings to raise the presumption about the furnishing of inaccurate particulars of income in view of judgment of Hon'ble High Court in the case of *CIT Vs. Baroda Tin Works 221 ITR 661 (Guj)*. Relevant paragraphs are extracted below :

“13. The fiction created under ss. 68, 69, 69A, 69B and 69C by itself cannot be extended to penalty proceedings to raise presumption about concealment of such income.

This Court has categorically held in Vinaychand Harilal (supra) arising on account of additions being made the mandate of s. 69A and such additions having given rise to presumption under Explan. to s. 271(1)(c) for the asst. yr. 1967-68. The Court said :

"It is undoubtedly true that in this case the income returned by the assessee was less than 80% of the total income as assessed by the ITO. However, it must not be forgotten that it was by resorting to the provisions of s. 69A that the ITO and the AAC assessed the amounts of the demand drafts as income of the assessee of the particular previous year relevant to the assessment year under consideration.

Unless and until we come to the stage of it being established, that the receipt of Rs. 60,000 constituted income of the assessee and that too without resort to the deeming provisions of s. 69A, it cannot be said that there was any scope for invoking the penalty provisions of s. 271(1)(c). In any event, the burden of proof would be clearly discharged the moment it was pointed out on behalf of the assessee in the penalty proceedings that it was by virtue of the deeming provisions after the assessee's version was rejected that the amount was brought to tax under s. 69A of the IT Act."

Thus, the decision of this Court in Vinaychand Harilal (supra) clearly covers the present case."

7. In the light of above discussion, we are of the considered opinion that it is not a fit case for levy of penalty u/s.271(1)(c) of the Act. Therefore, we direct the AO to delete the penalty of Rs.25,41,292/- levied u/s.271(1)(c) of the Act.

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

Order pronounced on this 07th day of June, 2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 07th June, 2024
Satish

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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