

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.366/Nag./2023
(Assessment Year : 2012-13)

Bhavika Gunwant Patel
303, Ramkrishna Apartment
Chhapru Nagar, Nagpur 440 008
PAN – ADPPP0913R

..... Appellant

v/s

Income Tax Officer
Ward-4(3), Nagpur

..... Respondent

Assessee by : Shri Rajesh Loya
Revenue by : Shri Abhay R. Marathe

Date of Hearing – 14/05/2024

Date of Order – 14/05/2024

ORDER

PER V. DURGA RAO, J.M.

The aforesaid appeal has been filed by the assessee challenging the impugned order dated 25/09/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2012-13.

2. The assessee has raised following grounds in this appeal:-

“(1) That the order of the Income Tax Officer, Ward 4(3), Nagpur, passed u/s 271(1)(c) is bad in law and wrong on facts and the learned CIT(A) erred in confirming the same.

“(2) That the notice issued u/s 271(1)(c) and the proceedings thereafter are bad in law.

(3) That the learned Assessing Officer erred in law and on facts in levying penalty u/s. 271(1)(c) at Rs.33,255/- and the learned CIT(A) is highly unjustified in confirming the action of the AO on the basis that the assessee accepted the original assessment order. On the facts and circumstances of the case and in law and the explanation offered, the action of both the learned authorities in further holding that the assessee has concealed the particulars of income is unjustified.

(4) That the penalty levied by the AO and confirmed by learned CIT(A) is illegal in as much as the ground for levy of penalty in penalty order is not in line with the ground for initiation of penalty in assessment order. The action of both the authorities is beyond the scope of law.

(5) That for any other ground with kind permission of Hon'ble members at the time of hearing of appeal."

3. Facts in Brief:- For the year under consideration, the assessee filed its return of income on 31/08/2012, disclosing total income at ₹ 1,82,730 and this information was shared by DDIT (Inv.), Unit-8(2), Mumbai. During the course of investigation, in the case of M/s. ACI Infocom Ltd., is a penny stock company listed with BSE with script code (517356). This company used to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gain or short term loss. On verification of the data, it is found that the assessee is one of the beneficiaries who have traded in the above mentioned scrips during the financial year 2011-12. On verification of the return of income for the assessment year 2012-13, it is seen that the assessee has claimed exempt income of ₹ 1,04,564, and the assessee had availed bogus long term capital gain and claimed the same as exempt for taxation purpose as per the provisions of section 10(38) of the Act. Subsequently, the case was re-opened by the Assessing Officer. On the basis of information available on record and other details, the Assessing Officer has calculated @ 3% of commission and accommodation of ₹ 3,14,267, i.e., sale price of shares of ₹ 3,14,267, which amounted to ₹ 9,430, and the same was

added back to the total income of the assessee as unexplained expenditure under section 69C of the Act. Subsequently, the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act.

4. Before the Assessing Officer, during the penalty proceedings, the assessee submitted that the addition was made on estimate basis and, therefore, no penalty can be levied. However, the Assessing Officer levied the penalty of ₹ 33,255, under section 271(1)(c) of the Act which was confirmed by the learned CIT(A) as well. The learned CIT(A), while confirming the order passed by the Assessing Officer under section 271(1)(c), observed as under:—

"5.1 This appeal is being directed against the order u/s 271(1)(c) of the Act. In this case, the assessment was completed u/s 143(3) r.w.s. 147 of the IT Act, 1961 by assessing income of Rs.5,06,427/-. In this case, information was shared by DDIT(Inv.), Unit-8(2), Mumbai. During the course of investigation, in the case of M/s ACI Infocom Ltd., a penny stock company listed with BSE used to facilitate introduction of unaccounted income of members of beneficiaries in the form exempt capital gain or short-term loss. On verification of data, the AO found that the appellant was one of the beneficiaries who have traded in the above-mentioned script. On verification of return of income, it was found that the appellant claimed exempt income of Rs.1,04,564/-. The appellant also availed bogus LTCG and claimed exemption from tax u/s 10(38). The appellant had sold shares on various dates amounting to Rs.3,14,267/- which as per AO nothing but an accommodation entry to introduce capital in business. Since, the appellant failed to establish proper link with such transaction, the AO disallowed the exemption u/s 10(38) and added back to the income of the appellant. The AO also levied commission @3% on such accommodation entry of Rs.9,430/- and added back the same to the income of the appellant u/s 69C of the Act. Based on above addition, the AO also levied penalty u/s 271(1)(c) of Rs.33,255/-being 100% of the tax sought to be evaded."

5. On being aggrieved, the assessee carried the matter before the Tribunal.

6. Before us, the learned Counsel for the assessee submitted that the entire addition made by the Assessing Officer in this case is on estimate basis and, therefore, no penalty can be levied under section 271(1)(c) of the Act.

Alternatively, the learned Counsel for the assessee submitted the Assessing Officer issued notice dated 16/11/2019, initiating penalty proceedings on the ground of concealment of particulars of income by the assessee, a copy of which is placed at Page-1 of the Paper Book. He further submitted that against another notice dated 15/12/2019, issued by the Assessing Officer, wherein he alleged regarding furnishing of inaccurate particulars of income by the assessee. The learned Counsel submitted that the Assessing Officer, while issuing a notice for initiating penalty proceedings has not intimated as to whether notice is issued for concealment of particulars of income or for furnishing of inaccurate particulars of income and hence, on these two counts, penalty has to be deleted.

7. On the other hand, the learned Departmental Representative supported the order passed by authorities below.

8. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. In the present case, no doubt, the addition was made by the Assessing Officer only on estimate basis and, therefore, penalty under section 271(1)(c) of the Act cannot be imposed. That apart, the Assessing Officer during the penalty proceedings has not shared about whether the assessee has concealed the income or filed inaccurate particulars of income. He has issued notice on different dates i.e., 18/11/2019 and 05/12/2019 for two different reasons for initiation of penalty proceedings. From perusal of these notices, we are of the view that the Assessing Officer was not clear as to whether the assessee has concealed the particulars of income or the assessee has furnished inaccurate

particulars of income and, hence, the penalty levied by the Assessing Officer cannot survive. Under these facts and circumstances of the case, we hold that the learned CIT(A) was not justified in confirming the order passed by the Assessing Officer levying penalty under section 271(1)(c) of the Act. Consequently, we set aside the impugned order passed by learned CIT(A) deleting the penalty imposed by the Assessing Officer under section 271(1)(c) of the Act. Thus, the grounds of appeal raised by the assessee are allowed.

9. In the result, appeal filed by the assessee are allowed.

Order pronounced in the open Court on 14/05/2024

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 14/05/2024

Copy of the order forwarded to:

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

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur