

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

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA 1285/Mum/2024
(Assessment year: 2012-13)

Chandraiah Balanna Kalal E-1201, Fennel, Nr. Madhuvan Society, Shimpoli, Gorai Road Borivali West, Maharashtra – 400 092 PAN : AABPK8755H	vs	DCIT 42(2)(1), Mumbai Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Maharashtra-400 051
APPELLANT		RESPONDENT

Assessee by : Shri Sumit Mantri
Respondent by : Shri H.M. Bhatt (SR. DR.)
Date of hearing : 12/06/2024
Date of pronouncement : 18/ 06/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the Assessee is preferred against the order of the Ld. National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2012-13, date of order 13.03.2024. The impugned order was emanated from the order of the Ld. Income-tax Officer, Ward 32(1)(2), Mumbai (in short, 'the A.O.')

passed under section 271(1)(c) of the Act, date of order 12/03/2018.

2. The assessee has taken the following grounds of appeal:-

“Ground -1. On the facts and the circumstances of the case, the Ld. A.O. erred in issuing the notice u/s 274 r.w.s. 271(l)(c) since the same does not mention the satisfaction of the reasons for initiation of the penalty proceeding and hence the same needs to be quashed.

Ground -2. On the facts and the circumstances of the case, the learned AO erred in not mentioning whether the notice has been issued towards "Concealment of income" or "for furnishing of inaccurate particulars", thus, the above notice itself is invalid and bad in law further in assessment order also the initiation has been made for both the limbs.

Ground -3. On the facts and circumstances of the case, the Id. CIT(A) NFAC erred in confirming the penalty order passed by Id assessing officer without appreciating that the Id. Assessing officer vide order giving effect to the IT AT order allowed the disallowances and deleted the additions.

Ground -4. On the facts and circumstances of the case, the Id. CIT(A) NFAC erred in imposing penalty without appreciating that the addition has been made on assumption basis which itself will not attract penalty u/s. 271(l)(c).

Ground -5. The appellant craves leave to add, to delete, or amend any of the above grounds of appeal at the time of the hearing.”

3. Brief facts of the case are that the assessment was completed under section 143(3). Finally, the assessment order was set aside by the ITAT, Mumbai Bench and with a part relief for the assessee. The Ld.AO passed a rectification order and calculated the tax sought to be evaded amount to Rs.59,08,492/- @100%. So, the Ld.AO levied penalty amount of Rs.59,08,492/-. Being aggrieved, the assessee filed an appeal before the Ld.CIT(A). Ld.CIT(A) dismissed the appeal petition of the assessee. Being aggrieved, assessee filed an appeal before us.

4. We heard the rival submission and considered the documents available in the record. The Ld.AR first agitated the legal issue related to ground No.1 about the issuance of defective notice by the Ld.AO during the proceedings under section 274 read with section 271(1)(c) of the Act. The relevant notice dated 13/03/2015 is reproduced as below:-

Form-I.T.N.S. - 29

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Office of the Income-tax Officer 32(1)(2)
C-11, R.No.204, 2nd Floor
Pratyakshakar Bhavan
Bandra Kurla Complex,
Bandra (E), Mumbai 400 051

Dated: 30-03-2015

TO,

Shri Chandraiah Balanna Kalal
Plot No. 7, D-1,
Mandar CHS Ltd.,
RSC 21, Gorai I
Borvali West, Mumbai-400092

PAN: AABPK8755H

Whereas in the course of proceeding before me for the assessment year 2012-13 it appears to me that you:-

~~*have without reasonable cause failed to furnish me return of Income which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian Income tax Act, 1922 or which were required to furnish under Section 139(1) or by a notice given under Section 139(2)/148 of the Income tax Act, 1961, No. dated or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.~~

~~*have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income tax Act, 1922 or under Section 142(1)/143(2) of the Income tax Act, 1961. No. Dated~~

~~*have concealed the particulars of your income or furnished inaccurate particulars of such income.~~

You are hereby requested to appear before me at 11.35 A.M./P.M. on 13/04/2015 and show cause why an order imposing a penalty on you should be made under Section 271(1)(c) of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative, you may show cause in writing on or before the said date which will be considered any such order is made under Section 271(1)(c).

Seal



(Signature)
(C. MURUGAN) True Copy
Income-Tax Officer 32(1)(2),
Mumbai

5. The Ld.DR argued and fully relied on the order of the Revenue authorities.
6. We heard the rival submissions and considered the documents available in the record. The issue is squarely covered by the judgement of Hon'ble **Jurisdictional High Court** in the case of **Mohammed Farhan A. Shaikh Vs. PCIT (125 taxamnn.com 253) vide order dt. 11.3.2021**. The relevant paragraphs are reproduced as below: -

“179. Besides, the prima facie opinion in the assessment order need not always translate into actual penalty proceedings. These proceedings, in fact, commence with the statutory notice under section 271(1)(c) read with section 274. Again, whether this prima facie opinion is sufficient to inform the assessee about the precise charge for the penalty is a matter of inference and, thus, a matter of litigation and adjudication. The solution, again, is a tick mark; it avoids litigation arising out of uncertainty.

180. One course of action before us is curing a defect in the notice by referring to the assessment order, which may or may not contain reasons 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 Section 271(1)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitiating 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 section 271(1)(c), read with section 274 of IT 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 different 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.”

6.1. The issue is squarely covered by the jurisdictional High Court which is legally binding on us. Ld. AO did not mention the nature of concealment in the notice issued u/s 274/271(1)(c). The counsel laid down that in the absence of such specific notice, the notice would be invalid. As held in various judicial pronouncements including the decision of Hon'ble **Karnataka High Court** in **CIT V/s SAS's Emerald Meadows (73 Taxmann.com 241)** against which Special Leave Petition (SLP) filed by the department stood dismissed by Hon'ble Supreme Court which is reported as **73 Taxmann.com 248**. The notice u/s 274/271(1)(c) of the Act is not carrying the specific limb. Therefore, this is a case where both the parts of the offences i.e., concealment of income as well as furnishing of inaccurate particulars of income were involved.

Finally, respectfully following the binding judicial precedents as cited aforesaid, we are of the considered opinion that the impugned penalty is not sustainable on legal grounds. The Id. DR is unable to submit any contrary judgment before the bench. Hence, penalty U/s 271(1)(c) amount of Rs.59,08,492/- is quashed. The appeal of the assessee is succeeded.

Order pronounced in the open court on 18th day of June 2024.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 18/06/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, Mumbai**