

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIALMEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.4839/MUM/2023
Assessment Year: 2015-16**

Rita Hemchand Gandhi Ayodhya Apartments, Flat No.101, Ramgali, Kandivali West, Mumbai – 400067 (PAN : AKEPG6370P)	Vs.	Income Tax Officer (International Taxation), Ward 2(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Rajesh S. Shah, CA
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 04.06.2024
Date of Pronouncement : 26.06.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-56, Mumbai vide order no. ITBA/APL/S/250/2023-24/1057795393(1), dated 08.11.2023 passed against the assessment order by Income Tax Officer (International Taxation), Ward 2(3)(1), Mumbai, u/s.271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 27.09.2022 for AY 2015-16.

2. Grounds taken by the assessee are reproduced as under:

1. *“On the facts and circumstances of the case, CIT(A) erred in confirming the Penalty levied u/s. 271(1)(c) of the Act of Rs.1,52,084.*
2. a) *On the facts and circumstances of the case, the AO erred in levying the penalty though the AO has not specified under which limb, the penalty*

proceedings were initiated in the notice issued u/s.271(1)(c) dated 30/03/2022. The penalty levied under such circumstances is bad in law.

b) It is well settled law that the penalty proceeding Initiated without specifying the particular limb of the proceedings is bad in law.

3. *a) On the facts and circumstances of the case and in law, the AO wrongly issue of the notice u/s. 271(1)(c) of the Act though no proceedings have been initiated in the assessment order which is a required to be initiated & mentioned in the assessment order.*

b) The AO erred in issuing notice u/s.271(1)(c) on 30/03/2022 i.e. after the assessment order passed on 03/03/2022.

4. *a) On the facts and circumstances of the case and in law, the assessment order passed u/s. 147 is bad in law since order dated 03/03/2022 is digitally signed on 30/03/2022 and DIN was taken on unsigned order. It is not clear as to date of taking DIN.*

b) The penalty order passed u/ 271(1)(c) on bad assessment order which is bad in law is void ab initio.

5. *On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the penalty without considering detailed submission and judgements cited during the appeal proceedings. The order passed by the CIT(A) without considering the merits of the case is bad in law.*

6. *a) On the facts and circumstances of the case and in law, there is no concealment of Particulars of Income as the full particulars of Income were available before the department in the Form 26AS and AIS.*

b) The appellant submits that no addition has been made in the Return of Income filed, therefore, no penalty can be levied.

c) The appellant further submits that several judicial pronouncements have held that bonafide mistakes do not constitute the concealment of Income.”

3. In respect of penalty of ₹ 1,52,084/- imposed u/s. 271(1)(c), the moot point raised before us is that no addition has been made on the return of income filed by the assessee and that no penalty proceeding was initiated in the assessment order passed by the Ld. Assessing Officer, therefore, no penalty can be levied in the present case.

4. Brief facts of the case are that assessee is a non-resident and did not file her regular return of income. Case of the assessee was taken up for proceedings u/s. 147 r.w.s. 148 of the Act. In response to notice u/s. 148, assessee filed her return on 24.04.2021 reporting

total income at ₹ 60,83,333/-. Ld. Assessing Officer issued notice u/s. 142 (1) alongwith questionnaire against which assessee submitted the details as required. Ld. Assessing Officer noted that clarification and explanation filed by the authorised representative of the assessee is taken on record and has been examined. With these remarks and on the basis of the merits available on record, Ld. Assessing Officer assessed the total income of the at ₹ 60,83,333/-, i.e., at total income reported by her in the return filed in response to notice u/s.148 of the Act. Thus, returned total income is equal to the assessed total income.

5. In the impugned assessment order, nowhere the Ld. Assessing Officer has recorded any satisfaction about the initiation of penalty proceeding. The said impugned assessment order is a small order containing six paragraphs and is reproduced for ease of reference, so as to underscore the fact that there is no recording of satisfaction for the initiation of penalty proceedings at the time of passing of the assessment order. In the said assessment order, there is no direction to issue notice u/s. 274 r.w.s. 271(1)(c) for taking up penalty proceedings. It is important to take note of the fact that impugned assessment order is dated 03.03.2022 and the penalty show cause notice is dated 30.03.2022, as noted by the Ld. Assessing Officer in the penalty order in paragraph 2. The assessment order reads as under:-

“In the instant case, status of the assessee is a non resident and had not filed his return of income for A.Y.2015-16. Further, the case was re-opened under section 147 of the Income Tax Act, 1961 (herein after referred to be as the Act) after recording the following reasons for reopening the case.

2. The case was reopened u/s.147 and a notice u/s.148 was issued and served on 30.03.2021, after duly recording the reasons for the same and obtaining necessary sanctions from the concerned authority. In response to the same the assessee has filed his ROI on 24.04.2021 declaring total income of Rs.60,83,333/-. Subsequently notice u/s 143(2) of the I.T Act, 1961 was issued to the assessee on 26.11.2021.

3. Thereafter, notice u/s.142 (1) of the I.T Act, 1961 along with questionnaire dated 29.11.2021, and 12.02.2022 were issued and duly served on the assessee. In compliance of the statutory notice, the assessee has submitted the

details which are placed on record. The clarification and explanation filed by authorized representative is taken on record and has been examined the same.

4. *Subject to the above remarks and on the basis of the merits available on record, the total income of the assessee is hereby assessed at Rs.60,83,333/- as declared by the assessee in return.*

5. *Subject to the above narration of facts, evaluation of evidences, references of facts, income of the assessee is assessed and computed as under:*

Particulars	Amount (Rs.)	Amount (Rs.)
Income from other sources	60,83,333	
<i>Deduction under Chapter VIA (as per computation of the assessee)</i>		<i>Nil</i>
Assessed Total Income		60,83,333
Rounded off to(u/s 288A)		60,83,330

6. *Accordingly assessed u/s 143(3) r.w.s. 147 of the Act. Credit is hereby given for prepaid taxes after due verification and as per challan/certificates on record. Computation of income tax, surcharge, Education Cess and interest u/s. 234A, 234B, 234C & 234D of the Act is as per tax calculation sheet in ITNS-150A which is enclosed herewith as part of this order. Notice of demand u/s 156 of the Act.”*

6. Subsequently, in response to the penalty show cause notice, assessee furnished her detailed explanation by stating that there is no concealment nor furnishing of inaccurate particulars. According to the assessee, all the relevant documents and information asked for were furnished and the assessment order was passed accepting the income as declared in the return filed by the assessee. In the assessment so completed, no addition to the total income was made which according to her demonstrates that accurate particulars in the return of income were filed, there being no concealment of particulars of income nor furnishing of any inaccurate particulars of income.

7. Ld. Assessing Officer referred to Explanation 1 to Section 271(1)(c) and Explanation 3 to hold that assessee has concealed her

income. According to him, discrepancy in respect of taxable income of the assessee was detected only during the course of scrutiny proceedings which otherwise would have escaped assessment and therefore this amounts to concealment of income. He, further referred to clause (c) of Explanation 4 for computing the amount of tax sought to be evaded and levied a penalty of ₹ 1,52,084/-. Aggrieved, assessee went in appeal before the Ld. CIT(A).

8. Before the Ld. CIT(A), assessee made her submissions through e-proceedings. Ld. CIT(A) concurred with the views of the Ld. Assessing Officer and confirmed the penalty so imposed. He, thus dismissed appeal of the assessee. Aggrieved, assessee is in appeal before the Tribunal.

9. Before us, Ld. Counsel strongly submitted that there is no recording of any satisfaction by the Ld. Assessing Officer in the body of the assessment order dated 03.03.2022 for initiation of penalty proceedings u/s. 271(1)(c).

9.1. According to him, the said section requires that if the Assessing Officer in the course of any proceedings under the Act, is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty, a sum mentioned in the said section. Thus, the satisfaction to be arrived at by the Assessing Officer has to be in the course of any proceedings under the said Act, about the concealment of particulars of income or furnishing of inaccurate particulars of such income. Once the assessment order has been passed without recording of any satisfaction on the initiation of penalty proceedings, the Assessing Officer attains the status of *functus officio*. Further, the notice issued by the Ld. Assessing Officer for initiating the penalty proceedings is dated 30.03.2022 which is much after the date of passing of the impugned assessment order. Moreover,

the assessment has been completed by accepting the returned income, there being no addition or disallowance made by the Assessing Officer to the returned income. Therefore, there is no amount of any tax sought to be evaded by the assessee and thus there is no occasion for the Assessing Officer to impose any penalty,

10. Per contra, Ld. Sr. DR supported the views taken by the Ld. Assessing Officer and confirmed by the Ld. CIT(A).

11. We have heard the rival contentions and perused the material on record. Admittedly, it is a fact on record that the impugned assessment order dated 03.03.2022 does not contain recording of any satisfaction by the Assessing Officer to initiate penalty proceedings on either concealment of particulars of income or furnishing of inaccurate particulars of income in the assessment carried by him. For ease of reference, the said impugned assessment order is reproduced in the above paragraph. It is also a fact on record that the first notice was issued by the Assessing Officer for initiating the penalty proceedings only on 30.03.2022, i.e., much after passing of the impugned assessment order. At the time of issuing this notice for initiating penalty proceedings, the status of Assessing Officer was *functus officio*, since there was no proceeding which was pending under the Act as required u/s. 271(1)(c).

11.1. We also take note of the fact that though assessee had not filed her original return of income but total income reported by her in the return filed in response to notice u/s.148 has been accepted by the Assessing Officer as such and the assessed total income is equal to the returned total income of the assessee. There being no addition or disallowance made by the Assessing Officer, in the assessment completed u/s.147 of the Act.

11.2. From paragraph 5.2 of the penalty order, we note that the Assessing Officer himself has observed that as per section 271(1)(c), if

the Assessing Officer in course of any proceedings under the aforesaid Act, is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty, a sum mentioned in the said section. We also note that Ld. Assessing Officer has referred to Explanation 1 to section 271(1)(c) which in fact deals only with concealment of particulars of income for offering of explanation by the assessee. Further, by resorting to clause (c) below Explanation 4 to section 271, Ld. Assessing Officer has arrived at the amount of tax sought to be evaded on the total income assessed which is equal to the returned income, reduced by the amount of advance tax, tax deducted at source and self assessment tax paid by the assessee. The said computation of tax sought to be evaded is reproduced as under:

<i>Sr. No</i>	<i>Calculation of tax sought to be evaded by the assessee (Amount in Rs)</i>	
<i>A</i>	<i>Income on which tax is sought to be evaded</i>	<i>60,83,330</i>
<i>B</i>	<i>Tax on assessed income</i>	<i>7,60,417</i>
<i>C</i>	<i>Less: Tax paid before issuance of notice u/s. 148 of the Act-TDS</i>	<i>6,08,333</i>
<i>D</i>	<i>Tax on the income sought to be evaded(B- C)</i>	<i>1,52,084</i>
<i>E</i>	<i>Minimum penalty being 100% of tax</i>	<i>1,52,084</i>
<i>F</i>	<i>Maximum tax penalty being 300% of tax</i>	<i>4,56,252</i>

12. Considering the above factual observations, the penalty proceedings initiated by the Assessing Officer and the penalty so imposed thereafter is not in accordance with the provisions of the law as contained in section 271(1)(c) of the Act. Reading of section clearly indicates that the assessment order should contain a direction/satisfaction for initiation of penalty proceedings. It is a settled law that in the absence of recording of satisfaction and giving any direction for the initiation of penalty proceedings which must be in the course of any proceedings under the Act, penalty proceedings cannot be proceeded with. Accordingly, the penalty proceedings

initiated in the present case and the order passed thereupon is contrary to the legal position and is therefore set aside. Further, returned total income is accepted as the assessed total income in the assessment order passed u/s. 147 of the Act, resulting into an occasion where there is no amount of tax sought to be evaded. Thus, there is no penalty leviable in the present case on this aspect also. We, therefore delete the penalty of ₹ 1,52,084/- imposed by the Assessing Officer. Grounds taken by the assessee in this respect are allowed.

13. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 26 June, 2024

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 26 June, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai