

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

**BEFORE SHRI PRASHANT MAHARSHI, ACCOUNTANT MEMBER AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No. 391/Mum/2024  
(Assessment Year 2012-13)**

<b>Mr. Lalit Bhaskar Bhalerao (Individual),</b> Plot No. 56, Flat No. 101, Hansa Apartment Kansai Section, Ambarnath East, Thane-421501 <b>PAN : AMMPB3272D</b>	<b>Vs</b>	<b>The ITO.W. 2(5), Kalyan</b> Rom No. 25-B, 6 <sup>th</sup> floor, Ashar IT Park, Wagale Indl, Estate, Thane-400604
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Ms. Hetal Laghave  
Respondent by : Shri Manoj Kumar Sinha(SRDR)  
  
Date of hearing : 11/07/2024  
Date of pronouncement : 22/ 07/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee was filed against the order of the 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 04.12.2023. The impugned order was emanated from the order of the Ld. National Faceless Assessment Centre, Delhi (in short, 'the Id. A.O.') passed under section 271(1)(c) of the Act date of order 16/10/2022.

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

*"1) That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in proceeding with the impugned order without serving a copy of assessment order u/s. 143(3) r.w.s. 147 of the Act to the Appellant in time.*

*2) That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in passing the impugned order thereby levying penalty u/s. 271(l)(c) of the Act amounting to Rs. 6,28,020/-.*

*3) That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in not considering the fact that the Demand Notice u/s. 156 of the Act, is issued 6 days prior to the date of passing the penalty order u/s. 271(l)(c) of the Act.*

*4) That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has to consider the statement of facts and condonation delay application filed during the appeal.*

*5) That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has passed an ex-parte penalty order without appreciating the fact that the appellant was paralyzed in the year 2023 due to accident."*

*6) That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in not considering Section 275 of the Act.*

*7) That the impugned order being contrary to law, evidence and facts of the case may kindly be set aside, amended and modified in the light of the grounds of appeal enumerated above and the appellant be granted such relief as is called for on the facts and in the circumstances of the case of the appellant and in law.*

*8) That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.*

*9) That the appellant craves leave to reserve to himself the right to add, to alter or amend any of the grounds of appeal before or at the end of the hearing and to produce such further evidence, documents and papers as may be necessary."*

3. Brief facts of the case is that the assessment was completed under section 143(3) read with section 147 of the Act with an addition amount to Rs.12,55,000/- on account of contractual amount received from the Thane Municipal Corporation and Rs.10 lakhs deposited in cash in bank account. Both the amounts

are added back with the total income which works out to Rs.22,55,000/-. The assessee filed the return U/s 44AD under the presumptive scheme. After completion of assessment, the Ld.AO proceeded to issue notice under section 274 read with section 271(1)(c) of the Act for levy of penalty under section 271(1)(c) of the Act, which is leviable amount to Rs.6,28,020/- i.e. @100% of the of tax sought to be evaded. The aggrieved assessee filed an appeal before the Id. CIT(A). The Id.CIT(A) upheld the penalty order. Being aggrieved, the assessee filed an appeal before us.

4. The Ld.AR argued and placed before the Bench that the assessee is a paralytic patient due to accident and not able to comply with the requirement of the Ld. CIT(A) in the appeal proceedings. Both the contractual receipt and cash deposit are added back with the total income. The assessee filed return under section 44AD, so the net profit ratio will be applicable on the turnover as per the Act. The Id. AR further placed that the assessee made the objection that the assessee had not received the order under section 143(3). The Ld.AR invited our attention in penalty order page 3 which is reproduced as below:-

*"13. However, the assessing officer informed that the order will be send by post or on the mail ID. Since, I have not received any assessment order copy. I am unable to file the appeal against the said order. Further the reason for the initiation of penalty proceeding itself can't be verified, so I request your goodself to kindly keep the penalty proceeding in abeyance as the passing of the penalty order without providing me any opportunity of being heard will be against the principle of natural justice. So I request your good self to kindly provide me the Assessment order copy of the Assessment year 2012-13 and an opportunity to represent my case. Details and particulars submitted herewith will fulfill your requirement. Further I am enclosing herewith the copy of Letter submitted to the concerned jurisdictional officer alongwith the screenshot of thy webportal wherein the order copy itself is not available.*

4.1 I have carefully perused the submissions made by the assessee, and details obtained from the Jurisdictional Assessing Officer (JAO), the JAO has provided the details for sending the demand notice and asst. order through "Speed Post" vide No.EM064594505IN on 16/2/2019, however the postal authority returned the notice on 24/12/2019 with a remark as "Unclaimed". The "unclaimed/refused" notice amounts to valid service of notice. The assessee submissions are not acceptable and hence it is constrained upon the Assessment unit of Na-FAC to proceed for levy of penalty.

5. In the light of the above facts of the case, it is evident that assessee had deliberately concealed particulars of its income of Rs.22,55,000 /- with an intention to evade tax and is a fit case for levy of penalty u/s.271(1)(c) of the Income-tax Act 1961.

With reference to levy of penalty u/s. 271(1)(c) Explanation (1) to Section 271(1)(c) is reproduced hereunder in brief:

"Where in respect of any facts material to computation of total income of any person under this Act;-

(A) Such person fails to offer an explanation or offers an explanation which he is not able to substantiate and failed to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him.

(B) Such person offers an explanation which he is not able to substantiate and failed to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,"

6. Since the assessee had failed to offer any satisfactory explanation both during the assessment proceedings and the penalty proceedings, the assessee's case is covered by explanation (1)(B) to Section 271(1)(c) of the Income tax Act 1961.

7. Accordingly, this is a fit case for levy of penalty u/s 271 (1 )(c) of the Act, 1961. The minimum penalty leviable in this case is Rs.6,28,020/- (Tax payable as per income assessed is Rs.643223 - Tax payable as per return filed by the assessee Rs.15,203 = Tax on concealed income Rs.6,28,020/-) and the maximum penalty leviable is Rs.18,84,060/-. Considering the facts of the case, I hereby proceed to

*levy a minimum penalty of Rs.6,28,020 /- [Rupees Six lakhs twenty-eight thousand twenty only) for AY 2012-13.*

8. *The penalty is levied with prior approval of the Addl. Commissioner of Income Tax. Issue demand notice u/s 156 of the Act”*

5. The Id.DR argued and fully relied on the order of the revenue authorities.

6. We heard the rival submission and perused the documents available in the record. The assessment was completed under section 143(3) / 147 with the addition of contract amount of Rs.12,55,000/-. But the entire contract amount should not be taxed in the hands of the assessee as the assessee is filing return under section 44AD of the Act. So, the net profit rate should be applicable as per the provision of the Act. Further, the source of the cash deposit in the bank account of Rs.10 lakhs was not explained before the Id. Assessing Officer. But the Id. Assessing Officer had not taken the pain to explain the issue and related entries in the bank account. So, the entire amount was added back with the total income of the assessee. The grievance of the assessee is that the demand notice U/s 156 is issued prior 6 days of issuing penalty order. The assessee had not got the opportunity to file an appeal before the Id. CIT(A). Accordingly, the assessee would get immunity by considering Section U/s 275 of the Act. During the penalty proceedings, the assessee explained the reason for the delay in filing the appeal U/s 246A of the Act. But the Id. AO had not considered the assessee's plea & penalty order was passed. Natural justice is denied in this case. In our considered view, the penalty order is passed without considering the assessee's plea. The reason was properly explained by the assessee in penalty proceeding U/s 274 of

the Act. Accordingly, we quash the impugned penalty order and the penalty U/s 271(1)(c) of the Act amount of Rs. 628,020/- is deleted.

7. In the result, appeal of the assessee **ITA No. 391/Mum/2024** is allowed.

Order pronounced in the open court on 22<sup>nd</sup> day of July, 2024.

Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 22/07/2024

Pavanan

**Copy of the Order forwarded to:**

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

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai