

IN THE INCOME TAX APPELLATE TRIBUNAL, "C" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA No. 2376/MUM/2024
(A.Y.2015-16)

PrashantJitemdraSarvaya, 404, Jatan Apt, Datta Mandir, Road, Malad (East), Mumbai -400097.	Vs.	ACIT Circle- 30(2), Mumbai-400012.
PAN/GIR No. AZSPS0629Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri D.C.Saboo.AR
Respondent by	Shri H.M Bhatt. Sr. DR

सुनवाई की तारीख/Date of Hearing	10.07.2024
घोषणा की तारीख/Date of Pronouncement	15.07.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre, Delhi / CIT(A) passed u/sec 271(1)(c) and U/sec 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. On the facts and in the circumstances of the case CIT [A] has erred in passing of order by violating mandatory provisions of section 250[1] without issuing notice of hearing to appellant.*
- 2 On the facts and in the circumstances of the case CIT[A] has erred in passing appeal order without disposing of all grounds of appeal and reason for such not disposing of all grounds of appeal.*

3 On the fact and in the circumstances of the case CIT[A] has erred in passing order by violating the principle of natural justice.

4 On the fact and in the circumstances of case CIT[A] has erred in confirming penalty of Rs 36,48,000/- on the addition of Rs 1,40,340/- to return income.

5 On the fact and in the circumstances CIT[A] has erred in confirming penalty by mentioning wrong fact.

6 On the facts and in the circumstances CIT [A] has erred in confirming penalty u/s 271[1] [c] which is levied by issuing defective show cause notice, as the relevant clause as applicable to the case of the assessee was not appropriately marked and no specific charge is marked and no specific charge was mentioned and for which the penalty was being initiated and hence it has resulted into taking away assessee valuable right of contesting the same and therefore proceeding stand vitiated. CIT[a] has confirm penalty on the same defective show cause notice.

7 CIT [A] has confirmed penalty which is levied by AO under presumption that appellant has accepted addition in quantum proceeding means penalty is automatically liveable without taking in to consideration that penalty proceeding and assessment proceeding are different.

8 Your appellant craves your leaves to add, alter, modify and delete these grounds of appeal.

2. The brief facts of the case are that, the assessee is engaged in the business of trading of gold bullion and operating from Mumbai. In the course of business, cash collections of Rs.89,87,500/- was carried out by the assessee's office person from different customers at Hyderabad and whereas he was intercepted by Hydeabad City Police as the cash transactions are not supported by proper documents and the matter was referred to DDIT (Inv),Hyderabad. Subsequently the entire cash was seized and it was deposed that the cash belongs to various persons as per the directions and the statement u/sec131 of the Act was recorded, and it was accepted that

the entire cash belongs to the assessee and considered as undisclosed income for A.Y 2015-16. Accordingly the Assessing Officer(AO)has issued notice u/sec 153C and u/s 143(2) of the Act. In response to notice, the Ld. AR of the assessee appeared from time to time and submitted the details, computation of income, profit and loss account and other financial details. On perusal of the documents, the AO has dealt on information of seizure of cash and find that the assessee has declared an amount of Rs.89,99,990/- under the head speculation income in return of income filed and no further addition is made in this regard. On the second issue, the AO found that the assessee has made credit card payments of Rs.2,86,290/- and no details were filed and it was mentioned that they were incurred in respect of personal expenditure and the assessee has withdrawn an amount of Rs.1,45,950/- from the capital account in the F.Y.2014-15, Since the withdrawals are not sufficient and do not commensurate with the expenses incurred, the AO considered the difference amount of Rs.1,40,340/- as unexplained expenditure u/sec 69C of the Act and assessed the total income of Rs. 94,19,160/- and passed the order u/s 143(3) of the Act dated 29.12.2016.

3. Subsequently, the AO has initiated penalty proceedings u/s 271(1)(c) of the Act, whereas in the penalty proceedings the assessee was issued show cause notice and the assessee has not properly complied with the

explanations. Finally the AO was not satisfied with the submissions and levied a penalty of Rs. 26,48,000/- and passed the order u/s 271(1)(c) of the Act dated 22-06-2017.

4. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A). In the appellate proceedings, the CIT(A) has considered the grounds of appeal, finding of the proceedings but has confirmed the penalty levied by the A.O and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR of the assessee submitted that the assessee has cooperated in submitting the information with the A.O. Further the notice issued for levy of penalty is invalid and relied on the judicial decisions and prayed for allowing the appeal. Contra, the Ld. DR submitted that the CIT(A) has rightly confirmed the levy of penalty and the technicalities raised by the assessee are devoid of merits and supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue is that the assessee has challenged the levy of penalty on legal issue as the A.O. has not applied his mind and non striking of charge in the penalty notice i.e. whether the charge is for concealment of income or furnishing of in

accurate particulars of income. The Ld.AR demonstrated the copy of penalty notice dated 29-12-2016 at page 10 of the paper book and the submissions are realistic. We find the Jurisdictional Honble High Court of Bombay in Mohd Farhan A Shaikh Vs. DCIT in Tax Appeal No. 51 to 57 of 2012 dated 11.03.202 (2021) 125 .taxmann. com 253 /434 ITR 1 (Bombay) has dealt on this disputed issue of not striking off charge in the penalty notice would vitiate the penalty proceedings. The Hon'ble High Court has made observations at page 56 as under;

180. One course of before us is curing a defect in the notice by referring to the assessment order, which may or not contain reason 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 Sec. 271(1)(c), does a mere defect in the notice – not striking off the irrelevant matter vitiate 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 Sec. 271(1)(c), r.w.s. 274 of the 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 deferent 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.

7. We have considered the facts, circumstances and ratio of the decision of Jurisdictional Honble High Court and are of the view that in the present case the A.O has not strike off the charge for levy of penalty for concealment of income or for furnishing of inaccurate particulars of income. Accordingly, we set aside the order of the CIT(A) and quash the penalty notice. And allow the grounds of appeal in favour of the assessee.

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

Order pronounced in the open court on 15.07.2024

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 15/07/2024

KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai