

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No.4477/Mum/2023
(Assessment Year: 2013-14)

Harshal Suresh Karvir 397, Sutar Ali, Chinchani, Palghar, Palghar-401 503	Vs.	National Faceless Assessment Centre 2 nd Floor, E Ramp, Jawaharlal Nehru Stadium, Delhi
PAN/GIR No. BHZPK 0168 E		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Tanmay Phadke
Respondent by	:	Shri P. D. Chogule
Date of Hearing	:	09.05.2024
Date of Pronouncement	:	06.08.2024

ORDER

Per Kavitha Rajagopal, JM:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2013-14.

2. The solitary issue in this appeal is the penalty u/s. 271(1)(c) of the Act amounting to Rs.3,13,774/- on the ground that the assessee has furnished inaccurate particulars of his income. The assessee has challenged the penalty order on the following grounds:

1. *On the facts and circumstances of the case and in law, the National Faceless Appeal Centre/Commissioner of Income Tax (Appeals) [the learned Commissioner (Appeals)] erred in confirming the penalty of Rs.3,13,774/- on the observation that the Appellant had furnished inaccurate particulars of his income. Since the penalty was levied by the Respondent on the limb of "concealment of income" which the learned Commissioner (Appeals) did not find to be applicable, the penalty ought to have been dropped instead of confirming on the other limb (i.e. concealment of particulars of income) on it was not never levied in the first place. Thus, the*

confirmation of penalty of Rs. 3,13,774/- on the other limb being unsustainable in law may be deleted and the present penalty order dated 31.10.2023 may be quashed.

2. *Without prejudice to the above, on the facts and circumstances of the case and in law, the learned Commissioner (Appeals) completely erred in reaching the conclusion that since the appeal against the assessment order was dismissed, the concealment has been established. A subsequent dismissal of appeal against the assessment order on 13.10.2023 has no bearing whatsoever on the penalty levied much prior to the above (i.e. on 15.12.2021). Thus, the penalty of Rs.3,13,774/- as confirmed by the learned Commissioner (Appeals) is incorrect and thus, it may be deleted.*

3. *Without prejudice to the above, on the facts and circumstances of the case and in law, the learned Commissioner (Appeals) completely erred in confirming the penalty of Rs.3,13,774/- which was untenable and bad in law. Thus, the said penalty of Rs.3,13,774/- may be deleted.*

3. The brief facts are that the assessee is an individual and had not filed his return of income for the year under consideration for which the assessee's case was reopened u/s. 147 of the Act based on the information that the assessee had made cash deposits amounting to Rs.10,15,415/- in his bank account.

4. The Id. Assessing Officer ('A.O.' for short) passed the assessment order u/s. 144 r.w.s. 147 of the Act being the best judgment assessment vide order dated 24.09.2021, thereby making the impugned addition and also initiated penalty proceeding for concealment of income. The Id. A.O. vide order dated 15.12.2021 passed u/s. 271(1)(c) of the Act levied a penalty of Rs.3,13,774/- being 100% on the tax sought to be evaded by the assessee.

5. Aggrieved the assessee was in appeal before the first appellate authority, challenging the penalty levied who vide order dated 31.10.2023 upheld the penalty levied by the Id. A.O.

6. The assessee is in appeal before us, challenging the impugned order.

7. We have heard the rival submissions and perused the materials available on record. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that in the present case, the ld. A.O. had made an addition u/s. 69 of the Act as unexplained investment/money/cash deposits from undisclosed sources and had levied penalty for concealment of particulars of income. It is also pertinent to point out that the ld. A.O. vide notice dated 24.09.2021 u/s. 274 r.w.s. 271(1)(c) of the Act has issued the notice for furnishing inaccurate particulars of income whereas the penalty has been levied for concealment of particulars of income. It is also observed that the ld. CIT(A) at para 6.8 has held that the penalty is levied for furnishing of inaccurate particulars of income, on the other hand, at para 6.9 has specified that the concealment of income has been established.

8. From the above factual matrix of the case, it is observed that both the ld. A.O. as well as the ld. CIT(A) is not precise on which limb the penalty has been levied as per section 271(1)(c) of the Act, i.e., whether for 'concealment of particulars of income' or for 'furnishing inaccurate particulars of income'. It is the settled proposition of law that the assessee is to be made aware of which of the limb u/s. 271(1)(c) of the Act the penalty is being imposed. Thus as per various decisions of the Hon'ble High Court including the Hon'ble Jurisdictional High Court has held that penalty has to be made only on the ground for which the penalty proceeding has been initiated and not on a new ground of which the assessee has no notice. The ld. AR has relied on the decision of Hon'ble Jurisdictional High Court in the case of *CIT vs. Samson Perinchery* [2017] 88

taxmann.com 413 (Bom) which has reiterated the said proposition. The relevant extract of the said decision is cited herein under for ease of reference:

4. *The impugned order relied upon the following extract of Karnataka High Court's decision in CIT V. Manjunatha Cotton & Ginning Factory(2013] 359 ITR 565/218 Taxman 423/35 taxmann.com 250 to delete the penalty-*

"The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are different. Thus, the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it as case of furnishing of inaccurate particulars. The apex court in the case of Ashok Pai 2007] 292 ITR 11 (SC) at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of Manu Engineering reported in 122 ITR 306 and the Delhi High Court in the case of Virgo Marketing P. Ltd., reported in 171 Taxman 156. has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind."

5. *The grievance of the Revenue before us is that there is no difference between furnishing of inaccurate particulars of income and concealment of income. Thus, distinction drawn by the impugned order is between Tweedledum and Tweedledee. In the above view, the deletion of the penalty, is unjustified.*

6. *The above submission on the part of the Revenue is in the face of the decision of the Supreme Court in 7 Ashok Pai v. CIT 2007] 292 ITR 11/161 Taxman 340 [relied upon in Manjunath Cotton & Ginning Factory (supra)) wherein it is observed that concealment of income and furnishing of inaccurate particulars of income in Section 271(1)(c) of the Act, carry different meanings/connotations. Therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under Section 271(1)(c) of the Act, for initiation of penalty proceedings will not warrant/permit penalty being imposed for the other breach. This is more so, as an Assessee would respond to the ground on which the penalty has been initiated/notice issued. It must, therefore, follow that the order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated, and it cannot be on a fresh ground of which the Assessee has no notice.*

7. *Therefore, the issue herein stands concluded in favour of the Respondent-Assessee by the decision of the Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory (supra). Nothing has been shown to us in the present facts which would warrant our taking a view different from the Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra).*

8. *In view of the above, the question as framed do not give rise to any substantial question of law. Thus, not entertained.*

9. On the above observation, we are of the opinion that in the present case also notice has been issued for one limb and penalty levied for another which in our consideration is

not in accordance with the decision of the Hon'ble Apex Court and the Hon'ble High Court. Therefore, by respectfully following the above said decision, we allow the ground no.1 raised by the assessee. As we have decided this issue on the basis of this ground, the other grounds of appeal require no further adjudication.

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

Order pronounced in the open court on 06.08.2024

Sd/-

Sd/-

(B R Baskaran)

(Kavitha Rajagopal)

Accountant Member

Judicial Member

Mumbai; Dated : 06.08.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai