

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER
आयकर अपील सं./ITA Nos.1478, 1479, 1480, 1481, 1482, 1483,
1484, 1485, 1486 & 1487/Chny/2024
निर्धारण वर्ष /Assessment Years: 2012-13, 2013-14, 2014-15, 2015-16,
2016-17, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17

Srinivasan Chandrasekara Chandilya
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[PAN: AAUPC3096J]

Asst. Commissioner of Income Tax,
Non-Corporate Circle-7(1),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri R.S.Balaji, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri Dr.Samuel Pitta, JCIT

सुनवाई की तारीख/Date of Hearing

: 30.08.2024

घोषणा की तारीख /Date of Pronouncement

: 30.08.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

The appeals as per following details have been filed by the assessee.

S.No.	ITA No.	CIT(A) / NFAC Details	DIN No.	Date of DIN	AY Year	Remarks
1	1478/Chny/2024	CIT(A)	ITBA / NFAC / S/ 250 / 2024- 25 / 1064066451(1)	12. 04. 2024	2012-13	Filed By assessee challenging imposition

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						of Penalty u/s 271(1) (c)
2	1479/Chny/2024	CIT(A)	ITBA / NFAC / S/ 250 / 2024- 25 / 1064066528(1)	12. 04. 2024	2013-14	-do-
3	1480/Chny/2024	CIT(A)	ITBA / NFAC / S/ 250 / 2024- 25 / 1064066065(1)	12. 04. 2024	2014-15	-do-
4	1481/Chny/2024	CIT(A)	ITBA / NFAC / S/ 250 / 2024- 25 / 1064066154(1)	12. 04. 2024	2015-16	-do-
5	1482/Chny/2024	CIT(A)	ITBA / NFAC / S/ 250 / 2024- 25 / 1064066324(1)	12. 04. 2024	2016-17	-do-
6	1483/Chny/2024	CIT(A)	ITBA / NFAC / S/ 250 / 2024- 25 / 1064116559(1)	16. 04. 2024	2012-13	Filed By assesse challenging imposition of Penalty u/s 271A
7	1484/Chny/2024	CIT(A)	ITBA / NFAC /	16. 04. 2024	2013-14	-do-

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			S/ 250 / 2024- 25 / 1064116753(1)			
8	1485/Chny/2024	CIT(A)	ITBA / NFAC / S/ 250 / 2024- 25 / 1064116911(1)	16. 04. 2024	2014-15	-do-
9	1486/Chny/2024	CIT(A)	ITBA / NFAC / S/ 250 / 2024- 25 / 1064117041(1)	16. 04. 2024	2015-16	-do-
10	1487/Chny/2024	CIT(A)	ITBA / NFAC / S/ 250 / 2024- 25 / 1064117196(1)	16. 04. 2024	2016-17	-do-

2.0 As all the above appeals are filed by the assessee on the common issue of penalties imposed u/s 271(1)(c) and u/s 271A for assessment years- 2012-13 to 2016-17 the same are adjudicated by this common order.

Appeals vide ITA Nos. 1478 to 1482 Supra, challenging penalty u/s 271(1) (c) for AY's 2012-13 to 2016-17.

3.0 As facts for all the years are same, Appeal vide ITA Nos. 1478 for AY-2012-13 is taken as the lead year. Original assessment u/s 143(3)

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was passed vide order dated 13.12.2019. The order shows following comments "...the assessee has concealed the particulars of income and hence penalty proceedings initiated separately...". Material available on records indicate that notice u/s 271(1)(c) dated 19.12.2019 was issued to the assessee. The appellant contested the additions made in the said order upto this tribunal which vide its order in ITA No.874 to 878/Chny/2020 dated 10.11.2020, directed the Ld. AO to recompute the income assessed by considering certain details, evidences placed on records. The Ld. AO passed its order giving effect (OGE) on 19.01.2022. The Ld. AO further proceeded to levy penalty u/s 271(1)(c) vide his order dated 01.02.2022.

4.0 Aggrieved by the above penalty orders dated 01.02.2022 Supra, the assessee has challenged the imposition thereof. Through its grounds of appeal the assessee has primarily argued that the penalty is non-maintainable as the Ld. AO has miscalculated the additions in the OGE and that the specific charge was not mentioned as to whether assessee had concealed its income or had furnished inaccurate particulars thereof.

5.0 The only issue which arises in the matter is as to whether the penalty u/s 271(1)(c) has been lawfully levied or not. The Ld. Counsel for the assessee has primarily harped on the premises that the amount determined by the Ld. AO in the OGE was not inconsonance with the

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directions of this tribunal in order dated 10.11.2020 Supra, it has also been argued that no penalty u/s 271(1)(c) was initiated vide the OGE and therefore it was non-maintainable. The Ld. DR has vehemently opposed the arguments of the Ld. Counsel for the assessee, placing his full reliance upon the orders of the Ld. AO and the Ld. CIT(A). It was submitted that penalty proceedings were germinating from the original order dated 13.12.2019 and hence the Ld. AO had lawful jurisdiction. It was also argued that the income determined in the OGE, upon which the penalty was calculated and imposed, was strictly in compliance to the directions given by this tribunal in its order dated 10.11.2020 Supra.

6.0 We have considered rival submissions in the light of material available on records. The arguments of assessee that income determined in the OGE is not correct and that the corresponding penalty would also therefore be incorrect, have been found to be not supported by facts on records. The Ld. Counsel for assessee confirmed during the hearing that, the OGE has not been contested by the assessee save challenging some petty mistakes u/s 154. Thus as the assessee has accepted OGE the income determined therein cannot be disputed now. The controversy raised qua lack of clarity as to whether assessee had concealed its income or had furnished inaccurate particulars thereof, is also not supported by facts as the Ld. AO in the assessment order dated

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13.12.2019 clearly indicated that assessee had concealed true particulars of his income. It is however seen that in spite of above facts, the penalty imposed by the Revenue u/s 271(1)(c) of the Act, is non-maintainable in the eyes of law and hence deserves to be quashed. The Ld. DR has submitted vide his paper book dated 13.08.2024 which, inter-alia, contains original penalty notices u/s 271(1)(c) issued to the assessee. It is seen that the said notices were issued on 19.12.2019. As discussed herein above, the original assessment order was passed on 13.12.2019. Consequently, the penalty notice ought to have been issued on or before 13.12.2019. Any notice issued after 13.12.2019 becomes non est in the eyes of law.

7.0 It is seen that section 271(1)(c) of the Act clearly empowers an assessing officer to initiate penalty proceedings if “...*in the course of any proceedings under this Act is satisfied that any person...*” has concealed the particulars of his income or furnished inaccurate particulars thereof. The law therefore mandates that there should be existence of “... any proceedings...” under the Act so as to give the Ld. AO the authority to initiate any penalty proceedings. With this understanding of the law, the Ld. AO was required to have issued penalty notice u/s 271(1) (c) of the Act on 13.12.2019 only. His issuance of notice u/s 271(1) (c) on 19.12.2019 Supra therefore makes the penalty order dated 01.02.2022

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invalid as it is not based upon any lawfully issued notice. Pertinently no proceedings were pending against the assessee on 19.12.2019 when the notice u/s 271(1)(c) was issued. In above view of the matter, we hold that the penalty order u/s 271(1)(c) dated 01.02.2022 is invalid and bad in law. The same is therefore quashed and set aside.

8.0 In the result, the appeal, raised by the assessee is allowed.

Appeals vide ITA Nos. 1479 to 1482 Supra, challenging penalty u/s 271(1) (c) for AY's 2013-14 to 2016-17

9.0 As stated above, the facts of the case in the above mentioned ITA Nos. are same as available in ITA No.1478. Accordingly, the decision taken in ITA No.1478 Supra would squarely apply in all the above appeals.

10.0 In the result, the appeals of the assessee for all above years is also allowed.

Appeals vide ITA Nos. 1483 to 1487 Supra, challenging penalty u/s 271A for AY's 2012-13 to 2016-17.

11.0 As facts for all the years are same, Appeal vide ITA Nos. 1483 for AY-2012-13 is taken as the lead year. Original assessment u/s 143(3) was passed vide order dated 13.12.2019. During the course of

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assessment proceedings, the Ld. AO had asked the assessee to provide the details of consultation fees received from out patients, bills, vouchers etc which it was required to maintain within meanings of Rule-6F of IT rules. According to AO the same was done so as to ascertain the impugned receipts were accounted for in the books of accounts of the assessee. The Ld. AO noted that in spite of given opportunities the assessee failed to produce evidences that it had maintained its records etc as mandated in Rule-6F of IT rules. The Ld. AO therefore proceeded to levy the penalty u/s 271A of the Act vide his order dated 31.01.2022. The grounds of appeal raised by the assessee challenging the penalty order, shows that the same has been challenged on the same premise of AO not mentioning whether is the case of concealment of income or submitting inaccurate particulars. Further, the assessee has also contested penalty order in respect of total income determined. The Ld. Counsel for the assessee has argued that it had provided to the Ld. AO all the details of its receipts during the proceedings before the Ld. AO. It is the case of the Ld. DR that the penalty u/s. 271A is leviable on the assessee because there are clear indications that no books of accounts were maintained by the assessee for the year under consideration within the meanings of Rule-6F of income tax rules.

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12.0 We have heard the rival submission in the light of material available on records. At the outset, as stated above the grounds of appeal raised by the assessee which are accompanying Form-36 are not having any connection with the controversy at hand e.i. levy of penalty u/s 271A. The assessment order clearly stipulates that the AO had asked the assessee to submit evidences in respect of evidences maintained under Rule-6F and the same were not produced. During the course of hearing in this, the Ld. Counsel for the assessee was asked as to whether the assessee has maintained books of accounts within the meanings of Rule-6F of IT rules r.w.s 44AA of the Act or not. The counsel confirmed that no books of accounts were maintained per Rule-6F of IT rules r.w.s 44AA of the Act. Section 271A of the Act clearly provides that penalty under the section shall be levied upon an assessee who fails to maintain its books of account and other documents as required u/s 44A r.w. Rule-6A of income tax rules. It further mandates that a penalty of Rs.25000/- shall be levied for the impugned failure. The failure of the assessee in this case is amply demonstrated from the material on records. In view of the same we are of the view that penalty u/s 271A has been rightly imposed by Ld. AO in this case. Accordingly, the grounds of appeal raised by the assessee are dismissed.

13.0 In the result, the appeal of the assessee is dismissed.

Appeals vide ITA Nos. 1484 to 1487 Supra, challenging penalty u/s 271A for AY's 2013-14 to 2016-17.

14.0 As stated above, the facts of the case in the above mentioned ITA Nos. are same as available in ITA No.1483. Accordingly, the decision taken in ITA No.1483 Supra would squarely apply in all the above appeals.

15.0 In the result, the appeal of the assessee for all above assessment years is also dismissed.

Order pronounced on 30th, August-2024 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 30th, August-2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF