

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "B" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.Nos.660 & 661/PUN./2024
Assessment Years 2010-2011 & 2011-2012

Mr. Prasanna Kantilal Mehta, J-3, 7 th Floor, Padmavati Nagar, Dhankawadi, PUNE-411043. Maharashtra. PAN AGVPM6117F	vs.	The DCIT, Central Circle- 1(1), Room No.401, 'C' Wing, 4 th Floor, PMT Bldg., Swargate, PUNE – 411037. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Hari Krishan
For Revenue :	Shri Arvind Desai, Addl. CIT-DR

Date of Hearing :	17.09.2024
Date of Pronouncement :	27.09.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

These assessee's twin appeals, I.T.A.Nos.660 & 661/PUN./2024, for assessment years 2010-2011 & 2011-2012, CIT(A), Pune-11, Pune's Din and Order No.ITBA/APL/S/250/2023-24/1053322440(1) and 1053322802(1) , dated 30.05.2023, in proceedings u/s.271(1)(c) of the Income Tax Act, 1961 (in short "the Act"); assessment year-wise, respectively.

Heard both the parties. Case files perused.

2. This assessee's "lead" appeal ITA.No.660/PUN./2024 raises the following substantive grounds :

The following grounds of appeal are taken independently and without prejudice to one another.

1. *“The Ld. Commissioner of Income Tax (Appeals) has erred in holding that the penalty proceedings are not invalid and ab-initio-void.*
2. *The penalty proceedings in this case are vitiated, as the Assessing Officer has failed to specify in the assessment order the charge/limb of section 271(1)(c) of the Income Tax Act, for which the penalty has been initiated. The penalty order accordingly is invalid and ab-initio-void. The same may be cancelled/quashed.*
3. *The penalty proceedings in this case are vitiated, as there is ambiguity about the charge/limb of section 271(1)(c) of the Income Tax Act, for which the penalty is initiated. The Assessing Officer has failed to strike off the Inappropriate/irrelevant charge/limb of section 271(1)(c) of the Income Tax Act, for which the notice is issued. The penalty order is therefore invalid and ab-initio-void. The same may kindly be cancelled/quashed.*
4. *The Ld. Commissioner of Income Tax (Appeals) has erred in confirming the penalty u/s 271(1)(c) of the Income Tax Act, on merits, in respect of the addition of Rs.3,00,000/- made to the income of the assessee on the ground that*

cash accounting to Rs.3,00,000/- has remained unexplained.

5. *The Ld. Commissioner of Income Tax (Appeals) has erred in holding that the penalty is levyable in respect of the returned income of Rs.13,06,380/- also.*

The Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the Assessing Officer himself has not levied the penalty in respect of the returned income of Rs.13,06,380/-.

6. *Since the Assessing Officer has not levied the penalty in respect of the returned income of Rs.13,06,380/- as such the Commissioner of Income Tax (Appeals) has no power/jurisdiction to enhance the penalty, by holding that penalty is also levyable in respect of the returned income.*

7. *The Ld. Commissioner of Income Tax (Appeals) has erred in holding that the penalty is levyable in respect of the returned income of Rs.13,06,380/- also, without issuing any enhancement notice to the assessee in this regard.*

8. *The appellant craves leave to add to or amend/modify or delete any or all of the above grounds of appeal.”*

3. Learned counsel submits very fairly that the assessee only presses for his 5th to 7th substantive grounds only regarding section 271(1)(c) penalty on returned income of Rs.13,06,380/-. We thus reject the assessee's 1st to 4th substantive grounds in very terms.

4. It is next noted that both the learned lower authorities have invoked section 271(1)(c) penalty in furtherance to a search action dated 09.06.2010 conducted by the Central Bureau of Investigation wherein cash of Rs.46.50 lakhs was found in this taxpayer's lockers. Suffice to say, the same led to initiation of section 153A proceedings which finally culminated in the corresponding assessment dated 28.02.2013 as upheld up-to the tribunal. It is in this factual backdrop that both the learned lower authorities have levied the impugned sec.271(1)(c) penalty on the ground that the assessee was found to be in possession of the undisclosed income and the CIT(A)'s has affirmed Assessing Officer's findings to this effect as under:

“12. I have considered this argument of the appellant. Since, the Hon. ITAT has held that cash amounting to Rs.3,00,000/- remained unexplained, therefore, the undersigned cannot presume that the appellant might be having cash savings of Rs.3,00,000/-. The appellant has not given any other reason as to why penalty u/s 271(1)(c)

should not be levied in this case. It is also noted that no such explanation was furnished before the Assessing Officer as well. Therefore, considering the totality of facts of the case, penalty u/s 271(1)(c) is upheld to the extent of additions confirmed by the Hon. ITAT. It may also be mentioned that for A.Y. 2010-11, no return of income was filed by the appellant although the same should have been filed by 31/03/2011 (belated return). The return was filed only on 19/12/2012 and therefore the Assessing officer held that penalty u/s 271(1)(c) of the Act is also leviable on the income declared in the said return. The appellant has not given any explanation as to why penalty is not leviable on the income of Rs.13,06,380/- declared in the return filed u/s 153A of the Act. Considering the totality of facts of the case, I am of the opinion that penalty is leviable on this income as well and accordingly the Assessing Officer is directed to re-compute the quantum of penalty on the income determined after giving effect to the order of Hon. ITAT dated 28/02/2019. Accordingly, the appeal filed by the appellant is PARTLY ALLOWED.”

6. Both the learned representatives reiterated their respective stands against and in support of the correctness of the impugned penalty. It emerges during the course of hearing that the assessee's returned income of Rs.13,06,380/- nowhere represents the specified nature of assets i.e., money,

bullion or jewellery etc., in sec.271(1)(c) Explanation-5A applicable in case of a search carried-out on or after 01.06.2007. That being the case, we invoke stricter interpretation to conclude that both the learned lower authorities impugned action levying sec.271(1)(c) penalty regarding the above returned income of Rs. 13,06,380/- is not sustainable in law. The assessee's instant 5th to 7th substantive grounds succeed. It's former "lead" appeal ITA.No.660/PUN./2024 is partly allowed in very terms.

7. Next comes the assessee's latter appeal ITA.No.661/PUN./2024 for assessment year 2011-12. Learned counsel raises his first and foremost legal plea that there exists a specific provision i.e., sec.271AAA Explanation-(b)(ii) and therefore, both the learned lower authorities have erred in law and on facts in invoking sec. 271(1)(c) of the Act. He also place on record the corresponding "panchanama" dated 29.09.2010 in the case file. This clinching fact has gone un-rebutted from the department's side. We conclude in this factual back drop that the learned lower authorities action initiating section 271(1)(c) penalty proceedings in this "specified" previous year is not sustainable in law. The same stands quashed accordingly. This assessee's latter appeal ITA.No.661/PUN./2024 is allowed.

8. The assessee's former appeal I.T.A.No.660/PUN./2024 is partly allowed and latter appeal ITA.No.661/PUN./2024 is allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 27.09.2024.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 27th September, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "B" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.