

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD
BEFORE DR. BRR KUMAR, ACCOUNTANT MEMBER**

**ITA No.1273/Ahd/2024
Asstt.Year : 2013-14**

Mrs.Pratibha Ashokumar Godha 10, Prena Park, Nr.Kashimir Park Society Nana Kumbhnath Road Nadiad. PAN : AFEPG 0254 M	Vs	The ITO, Ward-1 (Previously Ward-5) Nadiad.
---	----	---

(Applicant)		(Responent)
--------------------	--	--------------------

Assessee by :	Shri Pratibha Parmar
Revenue by :	Shri Ravindra, SR.DR

सुनवाई की तारीख/Date of Hearing : 09/10/2024
घोषणा की तारीख /Date of Pronouncement: 09/10/2024

आदेश/ORDER

This is assessee's appeal against the order of the ld.Commissioner of Income Tax (Appeal)-7, National Faceless Appeal Centre (NFAC), Delhi dated 27.04.2024 for the Asst.Year 2013-14 passed under section 250 of the Income Tax Act, 1961 ("the Act" for short).

2. The grounds raised by the assessee in the appeal read as under:

"1. Ld. CIT (A) (NFAC) erred in law and on facts in confirming penalty levied by AO of Rs.94,450/- invoking provisions of s. 271(l)(c) of the Act overlooking the fact that the appellant has neither concealed income nor furnished inaccurate particulars of income.

2. It is settled law that a mere making of the claim, which is not sustainable in law by itself, would not amount to furnishing of inaccurate particulars regarding the income of the assessee. In such case, penalty under section 271(l)(c) is not applicable. In the present case, since the Appellant has submitted all the details of her income and expenditure and such details themselves were not found to be inaccurate, no penalty could be levied.

3. It is submitted that a difference in opinion cannot lead to issuance of penalty u/s 271(l)(c) of the Act.

4. In the case of CIT Ahmedabad v. Reliance Petroproducts Pvt. Ltd. [(2010) 11 SCC 762] the Hon'ble Supreme Court has held as under -

"10. ...We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under s. 271(l)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by AO for any reason, the assessee will invite penalty under s. 271 (l)(c). That is clearly not the intendment of the legislature. "

5. The Ld. CIT (A) (NFACT) has erred in applying the test that improvements in the nature of fixed furniture are eligible for exemption u/s 54, whereas improvements in the nature of movable furniture are not eligible for exemption u/s 54.

6. It is submitted that cost of improvement incurred even after purchasing a new house is eligible for exemption u/s 54 against capital gains since cost of purchase includes any capital expenditure incurred to make house property habitable. Further, purchase or construction are not mutually exclusive options u/s 54 exemption.

7. It is submitted that all expenditure incurred to make house 'livable' is eligible for exemption u/s 54 against capital gains."

3. After hearing both the parties, I have gone through the notice under section 274 read with section 271 of the Income Tax Act, 1961 issued by the AO on 1.3.2016. The notice issued by the ITO under section 271 reads as under:

**NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE
INCOME-TAX ACT, 1961
(For Penalty u/s 271(1) (c) of the Act)**

PAN: AFEPG0254M	Office of the Income-tax Officer, Ward-5, Room No. 203, 2nd Floor, Aaykar Bhavan, Gitanjali Chokdi, Near Prakash Nagar, Pij Road, Nadiad-387002 Telephone No. (0268) 2556860 Date: -01/03/2016
------------------------	--

To,

Smt. Pratibha Ashokkumar Godha,
10, Prerna Park Society,
Nana Kumbhanath road,
Nadiad.

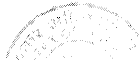
*Pen - 13/10
2015-16*

Sir,

Whereas in the course of proceedings before me for the Assessment Year 2013-14 it appears to me that you:

- (a) have furnished inaccurate particulars of your income and thereby concealed the such income.

You are hereby requested to appear before me at 11-00 A.M. on 11/03/2016 and show cause why an order imposing a penalty on you should not be made under section 271 [i.e. u/s. 271(1)(c)] of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271 [i.e. u/s 271(1)(c)].



Yours faithfully,

I find that the AO has issued the penalty order stating that “you have furnished inaccurate particulars of your income and thereby concealed the such income”.

4. For adjudication of this issue, I am guided by the following judgments:

- i) Karnataka High Court: CIT vs. Manjunatha Cotton and Ginning Factory: 359 ITR 565 held that notice under section 274 should specifically state the grounds mentioned in section 271(1)(c) of the Act, i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy requirement of law.

ii) Bombay High Court: Mr. Mohd. Farhan A. Shaikh Vs ACIT Section 271(l)(c): Penalty-Concealment-Non-striking off of the irrelevant part while issuing notice u/s 271(l)(c) of the Income Tax Act, order is bad in law. Assessee must be informed of the ground of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.

iii) The Hon'ble jurisdictional Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd. in ITA No. 475 of 2019, reiterated that notice under section 274 should specifically state the grounds on which penalty was sought to be imposed as the assessee should know the grounds which he has to meet specifically.

iv) The aforesaid principle has been reiterated in the in the case of CIT vs. SSA'S Emerald Meadows: 73 taxmann.com 241 (Kar) [Revenue's SLP dismissed in 242 Taxman 180]

5. Hence, respectfully following the above order of the Hon'ble High Courts, since the AO has not been specified u/s 274 as to whether penalty is proposed for alleged 'concealment of income' OR 'furnishing of inaccurate particulars of such income', the penalty levied is hereby obliterated.

6. The appeal of the assessee is allowed.

Dictated on the Open Court, typed and pronounced on 9th October, 2024.

Copy of this order be given to the assessee. The Registry is directed to dispatch as per procedure.

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Ahmedabad, dated 14/10/2024

vk*