

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 1486/KOL/2024
Assessment Year: 2012-13**

***Balaji Metal And Sponge Pvt. Ltd.....Appellant
[PAN: AACCB4997Q]***

Vs.

ITO, IT Department, NFAC, Delhi.....Respondent

Appearances:

Assessee represented by: S.K.Tulsiyan, Adv.

Department represented by: Ranu Biswas, ADDL.CIT, Sr. DR.

Date of concluding the hearing : September 23rd, 2024

Date of pronouncing the order : November 29th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by ld. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short ld. 'CIT(A)'] dated 18.06.2024 arising out of the assessment order framed u/s 144/147 of the Act dated 22.11.2019.

1.1. The brief facts of the case of the appellant are that the assessee being a company filed its return of income u/s 139 of the Act for AY 2013-14 on 27.09.2012 declaring total income of Rs. 'NIL'. Case of the assessee was reopened by issuing notice u/s 148 of the Act as per information received from the Investigation Wing, Kolkata that the assessee company was

beneficiary of Rs. 15 Lakh by way of taking accommodation entry through layering of funds through accounts of other companies during the financial year. The notice was sent to the assessee through ITBA system and registered post but there was no compliance from the side of the assessee, as a result of which, an amount of Rs. 15 Lakh has been treated as unaccounted money of the assessee and a penalty proceeding u/s 271(1)(c) of the Act is being initiated. An order u/s 271(1)(c) of the Act which is being the impugned order of this appeal has been passed by the Income Tax Department on 15.09.2021 on account of concealment of particulars of income. The said order u/s 271(1)(c) of the Act was placed before the Ld. CIT(A) wherein also appeal of the assessee has been dismissed by holding that it is very clear that the appellant has furnished inaccurate particulars of income which attracts the provisions of Section u/s 271(1)(c) of the Act.

Being aggrieved and dissatisfied with the impugned order, the present appeal has been preferred.

1.2. The ld. Counsel for the assessee challenges the impugned order on various grounds thereby citing several decisions of the Tribunal as well as high court that the Assessing Officer (hereinafter referred to as ld. 'AO') erred in having initiated proceeding u/s 271(1)(c) of the Act. In course of arguments, he took an additional ground of appeal which is legal ground that is as follows:

“7. That the levy of the penalty in the case of the Assesee stands absolutely invalid and void ab initio in as much as Penalty under Section 271(l)(c) having been initiated vide the Penalty Notice dated 26/03/2015 under the limb “concealment of the particulars of income” cannot be sustained on the ground of the other limb of “furnishing of inaccurate particulars of income” as sustained by the Ld. CIT(A) vide his Order dated 18/06/2024.”

1.3. The ld. Counsel for the assessee duly submitted that Section 271(1)(c) of the Act clearly speaks that it can only be applied when (i) an assessee has concealed particulars of income and (ii) an assessee has furnished inaccurate particulars of income. The ld. Counsel for the assessee further submits that penalty u/s 271(1)(c) of the Act speaks further that it is leviable if the Ld. AO is satisfied in the course of any proceeding under this Act that any person has concealed the particulars of income or furnished inaccurate particulars of

income. Ld. Counsel for the assessee further submits that there has to be satisfaction of the Assessing Officer (hereinafter referred to as Ld. 'AO') initiating the penalty as is to be clearly noted in a notice issued u/s 271(1)(c) of the Act as to which charge the said penalty been sought to be imposed which is completely lacking in this case. The Ld. Counsel for the assessee further submits that Ld. CIT(A) in its appellate proceeding also passed that there is a reason of furnishing inaccurate particulars of income and penalty order u/s 271(1)(c) of the Act passed by the Ld. AO reveals that for concealment of particulars of income that is contrary to each. Ld. Counsel for the assessee cited following decision on this point:

1. *CIT Vs. SSA'S Emerald Meadows reported in [2016] 73 taxmann.com 248 (SC)*
2. *CIT & Anr. Vs. Manjunatha Cotton and Ginning Factory (359 ITR 565) (Kar HC)*
3. *Sri Nilaya AR Projects Hyderabad v. ITO, ITA No. 1572/Hyd/2013*
4. *New Sorathia Engg. Co. Ltd. v. CIT [2006] 282 ITR 642/155 Taxman 513 (Guj.)*
5. *B.P. Poddar Foundation for Education ITA 439/KOL/2023 dated 26/12/2023*
6. *Suvaprasanna Bhattacharya -vs.- ACIT rendered vide Order dated 06.11.2015 in ITA No. 1303/KQL/2010*
7. *Principal CIT -vs.- Bijoy Kr. Agarwal (ITAT No. 272 of 2017 dated 02.04.2019) Cal H.C.*
8. *S.D.Constructions, Kolkata vs A.C.I.T.,Circle-49(1), Kolkata on 1 October, 2021 (I.T.A. No. 243/Ko1/2021)*

1.4. Ld. Counsel for the assessee further submits that imposition of penalty, concealment of particular of income or furnishing inaccurate particulars of income was solely on the basis of unlawful addition of Rs. 15 Lakh. The Ld. Counsel for the assessee submits that the order passed by the Ld. AO is an *ex-parte* order and completely on surmises and conjectures. According to him, the Ld. AO chose to rely on the random, vague, incomplete or unverified in facts false information of the third party without conducting any independent

enquiry. The ld. Counsel for the assessee submits that assessee company duly filed return of income showing loss of Rs. 2,59,62,933/- for the AY 2012-13 both u/s 139(1) and 148 of the Act and disclosing all the particulars of its true income with audited books of accounts, balance sheet, profit and loss account and other related documents. According to him, all the activities in transaction in relation to the business of the assessee had been reflected in the said audited accounts. Ld. Counsel for the assessee submits that there was no concealment of particulars of income from the side of the ass. The ld. Counsel for the assessee further submits that it is a fact that the assessee company did not file any appeal against the quantum addition of Rs. 15 Lakh solely in order to avoid protracted litigation and to buy peace. Since the assessee did not file any appeal against the assessment order does not under any circumstances comes to the conclusion that amount agreed to be added was concealed income as there was no intention of concealment rather assessee agreed to offer the income only to buy peace.

1.5. On the contrary, ld. DR supports the impugned order.

2. Upon hearing the rival submissions of the Counsel of the respective parties, the points for determination of this appeal are whether the penalty order passed by the Ld. AO confirmed by the Ld. CIT(A) is justified and legal.

2.1. The submission of the ld. Counsel for the assessee is that proceeding u/s 271(1)(c) of the Act can only be invoked either the assessee has concealed the particulars of his income or the assessee has furnished inaccurate particulars of his income. In the present case while we go over the order of the Ld. AO-, it appears to us that penalty notice u/s 274 r.w.s. 271(1)(c) of the Act dated 31.12.2019 was issued for initiating the same for concealment of particulars of income though the penalty order u/s 271(1)(c) of the Act was passed on 15.09.2021. However, Ld. CIT(A) in appellate proceeding against the said penalty order passed his appellate order on 18.06.2024 for the reason furnishing inaccurate particulars of income. It is clear that Ld. CIT(A) did not commence fresh penalty notice under the limb of furnishing inaccurate particulars of income by issuing fresh show cause notice.

2.2. Now looking at the judgment cited by the assessee in this context and we find that in case of *CIT & Anr. Vs. Manjunatha Cotton and Ginning Factory (359 ITR 565) (Kar HC)* Hon'ble Karnataka High Court has dealt upon the issue of notice u/s 274 of the Act for the purpose of levying penalty for concealment and observed as under:

“59. As the provision stands, the penalty proceedings can be initiated on various ground set out therein. If the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation 1 or in Explanation 1(B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty on him as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in Section 271(l)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under Section 274 should satisfy the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended if the show cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.

60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(l)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing

penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.

61. 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 a case of furnishing of inaccurate particulars. The Apex Court in the case of T. Ashok Pai v. CIT [2007] 292 ITR 11/161 Taxman 340 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 CIT v. Manu Engg. [1980] 122 ITR 306 and the Delhi High Court in the case of CIT v. Virgo Marketing (P.) Ltd. [2008] 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.”

2.3. The next submission of the Id. Counsel for the assessee is that since there was no appeal filed by the assessee hence, conclusion has been drawn that amount agreed to be added was a concealed income is completely against the law. We find that the assessee has clearly stated that the assessee agreed to offer the income only to buy peace and avoid protracted litigation. As we have already discussed in deciding the issue placed in the additional ground, we find that penalty order u/s 271(1)(c) of the Act having been initiated by the Ld. AO on one ground i.e. concealment. However, Ld. CIT(A) has initiated on the other ground i.e. inaccurate particulars of income that goes to prove that the penalty proceeding is without jurisdiction and bad in law. We have also

gone through the judgment filed by the assessee passed in the case of *S Badri vs ITO* by ITAT, Chandigarh in which it has been held:

“Again, at this juncture, attention is invited to a recent decision of the Chennai ITAT in the case of 5. Badri vs. The Income Tax Officer, I.T.A. No. 2607/Mds/2014 pronounced on 24 May, 2016 (Copy enclosed)

The brief facts of this case was that the assessee is a Senior Citizen and filed her return of income for the assessment year 2009-2010 admitting total income of Rs. 7,42,540/- and same was processed u/s. 143(1) of the Act.

The case was selected for scrutiny and notice u/s. 143 (2) of the act was issued. In compliance to above notice, the Id. Authorised Representative of assessee appeared and filed details for verification.

The Id. Assessing Officer alleged that as per the Annual Information Report (AIR) the assessee has made cash deposits aggregating to Rs. 45,01,000/- with The Lakshmi Vilas Bank Ltd, R.S.Puram branch, Coimbatore and was asked to file explanations in the assessment proceedings.

The Ld. Authorised Representative explained that the assessee has omitted to enter cash deposits in the cash hook and she was not in a position to pinpoint accurately the sources and nature of the deposits further to buy peace with the Department filed letter dated 22.11.2011 offering voluntarily the entire deposits for taxation and paid tax liability of Rs. 15,00,000/-.

The Assessing Officer completed the assessment as unexplained investments and passed order u/s. 143(3) of the Act dated 23.11.2011.

The Id. Assessing Officer also initiated penalty proceedings by issue of notice u/s.274 r.w.s 271(l)(c) of the Act

On appeal, the Commissioner of Income Tax (Appeals) dismissed the appeal.

On further appeal, the Hon’ble Tribunal held as under:

“7. We heard rival submissions, perused the material on record and judicial decisions cited. The Id. Authorised Representative expressed and emphasized on the grounds that the assessee has voluntarily accepted the income in the assessment proceedings and genuine explanations were provided for omitting to include in the balance sheet. The explanations are bonafide, considering the age of the assessee and sources of income declared in the income tax return. The assessee is a senior citizen and also deriving income from marriage hall, rental income and income from other sources and regularly filing income tax returns. The deposits in Lakshmi Vilas Bank pertains to sale of inherited jewellery, which assessee has treated as personal Asset and omitted to include in the return. The assessee filed letter voluntarily offering the income and payment of taxes. On perusal of orders of lower authorities, we found the Assessing Officer has calculated tax liability in the income tax computation sheet and omitted to give credit

to the tax paid of Rs. 15,00,000/- which was paid much before completion of assessment on 23.11.2011. The Id. Authorised Representative drew attention to the letter dated 22.11.2011 and explained that the assessee has offered income voluntarily in good faith to buy peace with the Income Tax Department and satisfied the bonafides. On payment of taxes with challan for the relevant assessment year on 23.09.2011 Rs. 5,00,000/-, 24.09.2011 Rs. 5,00,000/- and 22.11.2011 Rs. 5,00,000/-, aggregating to Rs. 15,00,000/-. The penalty proceedings cannot be always a gateway on accepting the addition and it is not automatic each an every circumstance has to be weighed with genuinely and bonafides. Considering the apparent facts, submissions on record, the findings of the lower authorities are entirely one way as the assessee has accepted the income after receipt of notice u/s. 143(2) of the Act. But the Id. Assessing Officer relied only on AIR information and no independent investigation was considered before completion of assessments. The assessee has not contested disputed issue in the assessment proceedings. Considering the Senior Citizen age of the assessee and assessee died during the income tax proceedings and the legal heir was brought on record. The genuine facts that the assessee has paid the taxes before the completion of assessment proceedings and not contested the assessment. Prime facie penalty proceedings are not automatic and every addition cannot contested for levying the penalty and we draw support from the principles laid down in case of case of CIT vs. Manjunatha Cotton and Ginning Factory, 359 ITR 565, (Karnataka) were it was held that the penalty proceedings are not automatic and they are distinct. Considering the factual matrix, legal decisions and assessment records, we set aside the order of Commissioner of Income Tax (Appeals) and direct the Assessing Officer to delete the penalty.”

3. Keeping in view the facts of the case as well as judicial pronouncements cited by the Id. AR, we are in this view that the initiation of penalty proceedings by the Ld. AO confirmed by the Ld. CIT(A) are against the law, hence, the order passed by the Ld. AO confirmed by the Ld. CIT(A) is set aside. The penalty of Rs. 4,63,500/- u/s 271(1)(c) of the Act is hereby directed to be deleted.

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

Order pronounced in the open Court on 29th November, 2024.

Sd/-

[Rajesh Kumar]
Accountant Member

Sd/-

[Pradip Kumar Choubey]
Judicial Member

Dated: 29.11.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Balaji Metal And Sponge Pvt. Ltd., 87, Park Street, Kolkata, West Bengal, 700016.**
2. **ITO, IT Department, NFAC, Delhi.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata