

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

**BEFORE DR.BRR KUMAR, VICE PRESIDENT
SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER**

ITA No.1530/Ahd/2024
(Assessment Year: 2015-16)

Aahvan Agencies Limited, (now merged with Aagam Agencies (P.) Limited), 1 st Floor, Akshay, 53, Shrimali Society, Navrangpura, Ahmedabad-380009 [PAN : AACCA 3738 Q]	Vs.	Deputy Commissioner of Income-tax, Circle-1(1)(1), Ahmedabad
(Appellant)	..	(Respondent)

Appellant by :	Shri S.N. Soparkar, Sr. Advocate & Shri Parin Shah, AR
Respondent by:	Shri Rignesh Das, Sr. DR

Date of Hearing	10.12.2024
Date of Pronouncement	11.12.2024

ORDER

PER: DR. BRR KUMAR, VICE PRESIDENT:

This appeal has been filed by the Assessee against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appal Centre (NFAC), Delhi (in short 'the CIT(A)') dated 26.07.2024 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for Assessment Year (AY) 2015-16.

2. The Assessee has taken the following grounds of appeal:-

"1. Ld. CIT (A) (NFAC) erred in law and on facts in confirming penalty levied by AO of Rs.25,28,944/- invoking provisions of s. 271(1)(c) of the Act overlooking the fact that the appellant has neither concealed income nor furnished inaccurate particulars of income.

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2. *Ld. CIT (A) (NFAC) erred in law and on facts in dismissing the appeal filed by the appellant by passing a cryptic order without adjudicating various grounds of appeal raised by the appellant challenging levy of penalty.*

3. *Ld. CIT (A) (NFAC) erred in law and on facts in confirming penalty levied on addition of Rs.81,84,285/- provision for loss on derivatives disallowed not appreciating that a bonafide claim as per ICAI norms duly shown in Profit & Loss a/c where no information was withheld and the provision was reversed in the next accounting year by offering the same for taxation.*

4. *Ld. CIT(A) (NFAC) erred in law and on facts not adjudicating the challenge that order passed levying penalty suffered from vice of application of mind as it is passed on the ground that assessee had not furnished explanation to the show cause notices which is factually incorrect and it ought to be cancelled as held by Hon'ble jurisdictional High Court as well as Hon'ble ITAT.*

5. *Ld. CIT (A) (NFAC) erred in law and on facts not appreciating the fact that the order passed levying penalty is against the provisions of law as the show cause notice issued is vague and no specific charge is alleged as regards concealment or furnishing inaccurate particulars of income.*"-

3. In this case, the Assessing Officer made disallowance of loss on derivatives amounting to Rs.81,84,285/-. Consequent to the disallowance, penalty u/s 271(1)(c) has been levied by the Assessing Officer.

4. We find that on page No. 5 of the assessment order, the Assessing Officer has mentioned that *"thus, contracts in respect of loss amounting to Rs.81,84,285/- which were outstanding as on 31.03.2015 are disallowed and added back to the total income of the assessee. Penalty proceedings u/s 271(1)(c) of the Act are being separately initiated."*

5. We also find that the last paragraph of the penalty order reads as under:-

"6. In view of the above facts I am satisfied that the assessee has furnished inaccurate particulars of its income as discussed above and

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is liable for penalty u/s 271(1)(c) of the Act. I, therefore, levy a minimum penalty @ 100% of the amount of potential tax sought to be evaded on account of filing of inaccurate particulars of income of Rs.81,84,285/-, which works out of Rs.25,28,944/- against the maximum penalty of Rs.75,86,832/-, on the assessee.

6. We have also gone through the issue of notice u/s 274 r.w.s. 271(1)(c) of Act issued by the Assessing Officer on 12.12.2017 mentioned at page no. 23 of the paper-book. We find that the Assessing Officer has issued the penalty notice stating that,

"...whereas in the course of proceedings before me for the assessment year 2015-16, it appears to me that you:-

.....

.....

have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are hereby requested to appear before me within seven days from the receipt of the notice and show cause why an order imposing a penalty on you should not be made under section 271 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."

For the sake of ready reference the notice u/s 274 issued by the DCIT, Circle 1(1)(1), Ahmedabad is posted hereunder:-

No.Circle-1(1)(1) /271(1)(C) /2017-18 Date:12/12/2017

Notice U/s 274 r.w.s. 271(1)(c) of the I.T.Act.1961.

To,
The Principal Officer,
M/s. Aahvan Agencies Ltd.
'Akshay' 1st Floor, 53, JShrimall Society,
Navrangpura, Ahmedabad. PAN: AACCA3738Q

Whereas in the course of proceedings before me for the assessment year 2015-16 it appears to me that you :-

~~Have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139 (2)/ 148 of the Income-tax Act, 1961 No. dated or have without reasonable cause failed to furnish it within the time allowed and in the manner required by the said section 139(1) or by such notice.~~

~~Have without reasonable cause failed to comply with a notice under section 22(4)/23(3) of the Indian Income-tax Act, 1922 or under section 142(1)/143(2) of the Income-tax Act, 1961 No. dated.....~~

Have concealed the particulars of your Income or Furnished inaccurate particulars of such Income.

You are hereby requested to appear before me within seven days from the receipt of the notice and show cause why an order imposing a penalty on you should not be made under section 271 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.

7. On this issue, we are guided by the following judgments:

1) *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 .

2) *Bombay High Court: Mr. Mohd. Farhan A. Shaikh Vs ACIT Section 271(1)(c): Penalty-Concealment-Non-striking off of the irrelevant part while issuing notice u/s 271(1)(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.*

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8. Hence, respectfully following the orders of the Hon'ble High Courts, since the Assessing Officer 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.

9. In the result, the appeal of the assessee is allowed.

This Order pronounced in Open Court on 11.12.2024

**Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT**

Ahmedabad; Dated 11.12.2024

***btk*

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad