

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

Before Shri Rajesh Kumar, Accountant Member and Shri Sonjoy Sarma, Judicial Member

I.T.A. No.1752/Kol/2024
Assessment Year: 2012-13

Escee Traders Pvt. Ltd
(formerly known as Satkriti Properties Pvt. Ltd.)Appellant
12th Floor, Unit 12B, Unimark Asian,
52/1, Shakespeare Sarani,
Kolkata – 700017.
[PAN: AANCS7043M]

vs.

ITO, Ward-5(1), Kolkata..... Respondent

Appearances by:

Shri R. C. Jhaver, FCA, appeared on behalf of the appellant.

Smt. Rama Choudhary, JCIT- Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 14, 2025

Date of pronouncing the order : January 28, 2025

आदेश / ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the assessee pertaining to Assessment Year 2012-13 against the order dated 21.06.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') which in turn arises out of a penalty order passed by the Assessing Officer u/s 271(1)(c) of the Act dated 26.03.2022.

2. Brief facts of the case are that the assessee filed its return of income declaring total income of Rs.19,81,896/-. The case of the assessee was reopened u/s 147 of the Act based on information received regarding bogus LTCG on sale of shares of Banas Finance Ltd. It was alleged that the assessee purchased 55,000 shares for Rs.30,11,800/- and sold them for Rs.10,05,950/- booking a loss of Rs.20,05,850/-. During the assessment proceedings, it was concluded

that the loss claimed was bogus and transaction was non-genuine. Accordingly, the Assessing Officer disallowed loss of Rs.20,05,850/- and treated as 'income from other sources' by passing an order u/s 143(3)/147 of the Act. He also mentioned in his order that penalty proceedings u/s 271(1)(c) of the Act was separately initiated for furnishing inaccurate particulars of income and the Assessing Officer thereafter passed a penalty order u/s 271(1)(c) of the Act by levying penalty of Rs.6,19,809/- upon the assessee stating that the assessee has concealed the particulars income.

3. Aggrieved by the above order, the assessee went in appeal before the Id. CIT(A) where the Id. CIT(A) upheld the order observing as under:

“5.4 I have considered the submission of the appellant. The contention raised by the appellant regarding validity of the reopening do not apply in respect of penalty proceedings. The AO found during the course of assessment proceedings that the appellant had claimed bogus loss of Rs.20,05,850/-. The finding of the AO was accepted by the appellant and no further appeal was filed. During the course of penalty proceedings before the AO and the present appellate proceedings, except for making general submission, the appellant has not brought any supporting evidence or documents to rebut the finding of the AO. The AO on the basis of evidences and documents had established that the appellant claimed bogus loss and the finding has become final and the appellant failed to bring any evidence on record to prove its grounds of appeal that the finding of the AO was not correct. Hence, the appellant has furnished inaccurate particulars of income within the meaning of section 271(1)(c) read with Explanation thereto. Hence, the penalty levied by the AO is confirmed and all the grounds of appeal taken by the appellant are dismissed.”

4. Dissatisfied with the above order, the assessee is in appeal before this Tribunal raising various grounds. However, the Id. AR contended that the penalty notice which was issued by the Assessing Officer stating that the assessee has furnished 'inaccurate particulars of income' vide notice dated 17.12.2019, which is as under:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 5(2), KOLKATA

To, SATKRITI PROPERTIES PRIVATE LIMITED C-4 GILLANDERS HOUSE, 8, NETAJI SUBHASH ROAD BBD BAG KOLKATA 700001, West Bengal India	
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PAN: AANCS7043M	Assessment Year: 2012-13	Notice No.: ITBA/PNL/S/271(1)(c)/2019- 20/1022546947(1)	Date : 17/12/2019
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Notice under section 274 read with section 271(1)(c) of the Income Tax Act, 1961

Sir/ Madam,

Whereas in the course of proceedings before me for the Assessment Year 2012-13, it appears to me that you have furnished inaccurate particulars of income.

You are hereby requested to appear before me either personally or through a duly authorised representative at 11:30 AM on 20/02/2020 and show cause why an order imposing a penalty on you should not be made under section 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 authorised 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(1)(c) of the Income Tax Act, 1961.

For ESCEE TRADERS PRIVATE LIMITED


Director / Authorised Signatory (ies)

HEMANT SAMDARSHI
WARD 5(2), KOLKATA

4.1 The Id. AR brought our attention to para 12 of the penalty order dated 26.03.2022 which cited 'concealment of income', the contents of which are reproduced as under:

"12. Therefore, I am of the considered opinion that the assessee has concealed the particulars of income. Thus the assessee is at fault in regards to the provision of section 271(1)(c) of the Act, 1961. I, therefore, impose penalty of Rs.6,19,809/- u/s 271(1)(c) of the Act, 1961 which is

100% as against maximum penalty leviable of Rs.18,59,427/- being 300% of the tax sought to be evaded.”

4.2 The Id. AR, therefore, stated that the penalty notice and penalty order were contradictory as the notice mentioned ‘inaccurate particulars’ while penalty was levied for ‘concealment’. This indicates a lack of clarity and mechanical initiation of penalty proceedings upon the assessee where the Assessing Officer has not specifically struck down the limb of charge of ‘furnishing particulars of income or concealment of income’. He, therefore, prayed that the imposition of such penalty cannot be sustained as the Assessing Officer has not clearly mentioned of charge/limb under the provisions of the Act. The Id. AR, in this context, placed reliance on the decision of *Hon’ble High court of Karnataka in the case of CIT vs Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 (Kar)*, wherein, the Hon’ble High Court cancelled the penalty taking note of the fact that the penalty notice did not spell out clearly as to whether the assessee has concealed the particulars of income or has furnished inaccurate particulars of Income.

5. We, after hearing the rival submissions and perusing the materials available on record, find that in the present case, the penalty notice dated 17.12.2019 referred to ‘furnishing inaccurate particulars of income’ whereas the penalty order passed by the Assessing Officer mentioned as ‘concealment of income’, which is evident as discussed above and this indicates discrepancy in issuing of notice and lack of proper satisfaction on the part of the Assessing Officer regarding specifying of charge as levied u/s 271(1)(c) of the Act against the assessee. We note that there was no consistency between the penalty notice and the penalty order so far `charge of penalty, is concerned and the mechanical initiation of penalty u/s 271(1)(c) itself is bad in law. We also find that Hon’ble Karnataka High Court in the case of CIT Vs. SSA’s Emerald Meadows, reported in (2016) 73 taxmann.com 241 (Kar)

endorsed the same view in Manjunatha Cotton and Ginning Factory (supra) and held as under:

“3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short ‘the Act’), to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565/218 Taxman 423/35 taxmann.com 250(Kar).

4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed.”

5.1 We also place reliance on the decision of the Co-ordinate Bench of Mumbai Tribunal in the case of Orbit Enterprises vs. ITO [60 ITR(Trib.) 251] held that Assessing Officer to make assessee aware in notice as to which of two limbs invoked against him for purposes of levy of penalty and striking off of irrelevant clause in notice is material. Respectfully following the judicial precedents supra, we cancel the penalty imposed by the Assessing Officer which has been erroneously confirmed by the Id. CIT(A) and therefore, the appeal of the assessee is allowed.

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

Kolkata, the 28th January, 2025.

Sd/-

[Rajesh Kumar]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 28.01.2025.

RS

Copy of the order forwarded to:

1. Escee Traders Pvt. Ltd
(formerly known as Satkriti Properties Pvt. Ltd.)
2. ITO, Ward-5(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches