

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'A' CHANDIGARH

BEFORE: SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND SHRI PARESH M. JOSHI, JUDICIAL MEMBER,

आयकर अपील सं./ITA No. 42/CHD/2024

निर्धारण वर्ष /Assessment Year : 2016-17

AKM Resorts, Village – Prabhat, Zirakpur, Distt. – Mohali.	Vs	The ACIT, Circle-5(1), Chandigarh.
स्थायीलेखासं./PAN /TAN No:AALFA5029N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rohit Kapoor, CA &
Shri Virsain Aggarwal, ITP
राजस्व की ओर से/Revenue by : Shri Vivek Vardhan, JCIT, Sr.DR
तारीख/Date of Hearing : 23.12.2024
उद्घोषणा की तारीख/Date of Pronouncement : 13.02.2025

PHYSICAL HEARING

आदेश/ORDER

PER PARESH M. JOSHI, JM

This is an appeal filed by the assessee under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the Act] before this Tribunal. The assessee is aggrieved by the order bearing No. ITBA/NFAC/S/250/2023-24/1058979375 (1)dated 21.12.2023 passed by the CIT(A) under Section 250 of the Act. The relevant assessment year is 2016-17 and the

corresponding previous year period is from 01.04.2015 to 31.03.2016.

2.

Factual Matrix

2.1 The brief facts of the case as per order under Section 271(1)(c) of the Act dated 25.06.2019 hereinafter referred to as the “Impugned Penalty Order” is that the assessment was completed under Section 143(3) of the Act vide order dated 08.12.2018 at an assessed income of Rs.72,39,660/- against the returned income of Rs.67,14,314/- by making addition of Rs.5,25,346/- on account of rejection of books and application of net profit rate.

2.2 Penalty proceedings u/s 271 (1)(c) for concealment of income and for furnishing inaccurate particulars of income were also initiated in respect of above mentioned addition and notice u/s 271(1)(c) read with section 274 of the Income Tax Act, 1961 was issued to the assessee on 08.12.2018 fixing the case for 04.01.2019.

2.3 Thereafter, another opportunity of being heard was given to the assessee vide notice dated 02.05.2019 fixing the case for 10.05.2019 sent by post and by e-mail also. However, on the said dates there was no response from the assessee.

2.4 That ld. AO basis above observed that from the above, it is clear that during the course of penalty proceedings, in spite of opportunities afforded to the assessee, the assessee did not respond to the show-cause notice issued. Therefore, I am satisfied that the assessee is intentionally not complying with the penalty proceedings and has nothing to say in the matter. Failure to file any reply on the part of assessee in fact indicates that the assessee has accepted the legitimacy of penalty proceedings initiated u/s 271(1)(c) of the Income Tax Act, 1961 and that he has no explanation to offer.

2.5 The ld. AO keeping in view that the assessee has not filed any reply was left with no other option but to decide the issue of penalty on merits on the basis of material available on record.

2.6 The ld. AO then after placing reliance on relevant extract of the assessment order which is reproduced below by us :

“During the course of assessment proceedings, the AR of the assessee was asked via ITBA to submit relevant bills and vouchers in respect of various expenses as claimed by him in the return of income filed for the year under consideration.

3.2 *Vide questionnaire dated 02/12/2018, the assessee was show caused as to why an amount of expenses of which bills/vouchers have not been produced should not be disallowed.*

3.3 *The relevant extract of the reply of AR is reproduced as under :*

'The NP as declared i.e. 22.72% is very reasonable and accurate and on a higher side as compared to the prevailing normal and rates of this type of industry. This is because of the large maintenance expenditure to be incurred to upkeep and maintain and resort. Also, a large amount is spent for up keeping of the same and cleaning after every function.

To prove our contention, we are hereby attaching the financial statements and ITS's of M/s Occasion Palace & M/s Oasis Banquet, perusal of which shows that the NP declared by such resort is only 7.725% and 3.54%. The average rate comes out of 5.6325%.

Therefore, to avoid any sort of litigation and to buy peace of mind, we accept the profit declared by the assessee in its return of income.

Total receipts as per balance sheet and ITR (excluding indirect taxes and hiring charges): Rs. 2,95,36,632/-

Applying an estimated: Rs. 2,95,36,632/- x 24.50%= RS. 72,36,475/- (NP rate of 24.50% on such receipts)

Less: Profit as shown in ITR: Rs. 67,14,314/-Difference: Rs. 5,22,161/-'

3.4 *It can be seen that in the reply, to the opportunity provided, the AR did not produce the relevant bills and vouchers.*

3.5 *Vide questionnaire dated 04/12/2018, the assessee was show caused as again on account of expenses to be disallowed and also was asked as to why the office should not accept the fact that M/s AKM Resorts willingly wanted to peg their net profit rate at 24.50%.*

3.6 *The assessee did not reply by the given date of 07/12/2018. Taking into consideration, the earlier reply of the assessee and the further opportunity provided to the assessee which the assessee did not avail, the assessee's declaration of NP rate at 24.50% (from 22.72% in ITR) is*

accepted. Applying 24.50% of NP rate on the gross receipts: Rs. 2,95,49,632/- x 24.50%= Rs. 72,39,660/-. The net profit comes to Rs. 72,39,660/-as against Rs. 67,14,314/-.

3.7 In this regard, reference is being made to Section 145 of the Act. Action 145 of the Act is reproduced as under:

145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assessee or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144

3.8 As per sub section (3) of section 145, the satisfaction has been recorded about the incompleteness of books of accounts and accordingly, the books of account are being rejected.

3.9 As regards to the estimation of the NP rate to be applied in the given case, the submissions of the assessee has been considered and found to be tenable. The NP rate declared as declared by the assessee is commensurate having regard to nature of business and turnover of the assessee among other things.

3.10 Accordingly, applying the NP rate of 24.50% on the gross receipts: Rs. Rs. 2,95,49,632/- x 24.50%= Rs. 72,39,660/-. The net profit comes to Rs. 72,39,660/-as against Rs. 67,14,314/-. Therefore, an addition of Rs 5,25,346/- is made to the returned income of the assessee. Penalty proceedings u/s 271(1)(c) of the Act is initiated separately for furnishing of inaccurate particulars of income.

2.7 Basis above premises, the ld. AO concluded that assessee is liable to penal action on account of furnishing inaccurate particulars of income and default has been committed by the assessee within the meaning of Section 271(1)(c) of the Act and has quantified concealment of

income to the tune to the tune of Rs.5,25,346/- and has imposed penalty of Rs.1,62,330/- under Section 271(1)(c) of the Act.

2.8 The order of penalty under Section 271(1)(c) of the Act bearing No. ITBA/PNL/F/271(1)(c)/2019-20/1016498274(1) is dated 25.06.2019 and since the assessee was aggrieved, he preferred first appeal under Section 246A of the Act before ld. CIT(A) who by the impugned order has sustained the impugned order of penalty dated 25.06.2019 by ld. AO and has dismissed the appeal of the assessee so filed.

2.9 That the assessee being aggrieved by the impugned order has preferred present appeal before us and has raised following grounds of appeal which are as under :

1. *The Ld. CIT(A) NFAC has erred in upholding the penalty order passed by the AO under Section 271(1)(C) of the Income Tax Act 1961. The decision by CIT(A) NFAC contradicts the facts of the case and the provisions of law.*

2. *The Ld. CIT(A) erred in confirming a penalty of Rs. 1,62,330/- imposed by the AO, disregarding the fact that the show-cause notice issued by the AO failed to specify whether the penalty was levied for concealment of particulars or furnishing inaccurate particulars of income. It is evident that the notice under Section 274 did not strike off either limb but initiated the penalty under both.*

3. Without prejudice to the above, the Ld. CIT(A) erred in confirming the penalty based on the estimated addition of Rs. 5,25,346/- made by the AO in the assessment order passed under Section 143(3). The CIT(A) NFAC failed to acknowledge that penalty under Section 271(l)(c) cannot be imposed on estimated income.

4. The Ld. CIT(A) erred in affirming the penalty of Rs. 1,62,330/- imposed by the AO, overlooking the fact that neither any inaccurate particulars were identified by the AO nor was any concealment of income established. The addition concerning the quantum was solely based on an estimation and cannot be construed as concealment or furnishing inaccurate particulars.

5. The Ld. CIT(A) erred in confirming the penalty of Rs. 1,62,330/- imposed by the AO under Section 271(l)(c) for the AY 2016-17, despite the AO dropping the penalty in earlier assessment years AY 2013-14 and AY 2014-15, which involved similar facts.

6. The appellant requests permission to add or amend the grounds of appeal before the appeal is heard and disposed off.

3.

Record of Hearing

3.1 The hearing in the matter took place on 23.12.2024 when both ld. AR for and on behalf of the assessee and ld. DR for and on behalf of the revenue were heard at length on their respective submissions. The ld. AR has placed on record of this Tribunal 'a broad submission' from pages 1 to 16, a Paper Book from pages 1 to 16, and Paper Book (Vol-2) from pages 17 to 28. In brief, it was contended that penalty cannot be imposed on "estimation". The ld. DR has supported the orders of lower authorities.

4.

Observations, Findings & Conclusions

4.1 We now examine the legality, validity and propriety of the impugned order basis records of the case.

4.2 We observe that by an assessment order bearing No. ITBA/AST/S/143(3)/2018-19/1014127521(1) dated 08.12.2018 an addition of Rs.5,25,346/- was made on basis of rejection of books of account and application of Net Profit rate of 24.50% on gross receipts of Rs.2,95,49,632/-. The net profit comes to Rs.72,39,660/- [Rs.2,95,49,632 x 24.50%=Rs.72,39,660/-]. The net profit comes to Rs.72,39,660/- as against Rs.67,14,314/-. Therefore, an addition of Rs.5,25,346/- [Rs. 72,39,660/- - Rs.67,14,314/- = Rs.5,25,346/-]. Hence, addition of Rs.5,25,346/- was made to return of income of Rs.67,14,314/- and assessed income was computed as Rs.72,39,660/- for tax purposes. The ld. AO in the aforesaid assessment order dated 08.12.2018 observed that in view of the facts, he is satisfied that it is a fit case for initiation of penalty under Section 271(1)(c) of the Act.

4.3 We observe from careful perusal of the impugned assessment order dated 08.12.2018 that addition of Rs.5,25,346/-(supra) was primarily made on by applying NP rate of 24.50% while the books of account were rejected but nevertheless estimation of NP rate was considered as claimed by assessee and was found to be tenable.

4.4 We observe from careful perusal of the impugned penalty order dated 25.06.2019 that in ultimate analysis tax sought to be evaded on concealed income of Rs.5,25,346/- was worked out at Rs.1,62,530/- and accordingly, Rs.1,62,330/- was imposed as 100% penalty under Section 271(1)(c) of the Act.

4.5 The assessee throughout has contended that once estimation of NP rate of 24.50% was found to be just, fair and reasonable and accepted by Revenue, the question of any willful concealment of income does not arise at all and that no penalty should be imposed. When additions to income are made on an estimation basis following the rejection of books of account, penalty

cannot be sustained/imposed under Section 271(1)(c) of the Act. The basis for this principle lies in the fact that estimation indicates a lack of precise evidence regarding the taxpayer's actual income, thereby failing to demonstrate any intention to conceal or misrepresent income. When the Assessing Officer resorts to estimating income rather than relying on documented financial records, it cannot be inferred that the taxpayer has engaged in concealment or provided inaccurate particulars of income. Consequently, since the additions arise from estimation rather than deliberate 'misrepresentation' penalty is unwarranted.

4.6 In the present case, the Assessing Officer estimated the profit at 24.50% as opposed to the 22.72% declared by the assessee, pursuant to the provisions of Section 145(3) due to the rejection of the books of accounts. The assessee, however, has provided financial statements from comparable resorts, demonstrating that the net profit declared by the assessee was reasonably high in comparison to that of other taxpayers engaged in

the same line of business. This evidence suggests that the profit margin declared by the assessee is not only justifiable but also aligns with industry standards, thereby undermining the AO's rationale for estimating a higher profit percentage without adequate justification.

4.7 The assessee has relied upon following decisions in support of their plea that when income of the assessee is determined on an estimated basis, it follows that no penalty under Section 271(1)(c) of the Act can be imposed for concealment or furnishing inaccurate particulars of income:

- (a) Anil Abhubhai Odedara Vs ITO, Ward 3(1) [2020] 117 taxmann.com 490 (Rajkot Tribunal)
- (b) CIT Vs Sahu Construction (P) Ltd. (2014) 42 Txmann.com 419 (Allahabad HC)
- (c) CIT-II Lucknow V/s Norton Electronics Systems (P) Ltd. [2014] 41 taxmann.com 280 (Allahabad)
- (d) CIT Vs Aero Traders (P) Ltd. [2010] 322 ITR 316 (Delhi HC)

In view of aforesaid premises drawn up by us (supra) we are of the considered view that since quantum assessment order was based on application of estimated rate of NP @ 24.50% which was found to be applicable

and that same was accepted by the Revenue the charge of penalty under Section 271(1)(c) of the Act does not survive. Accordingly, impugned order is set aside and penalty is deleted.

5.

ORDER

5.1 In the premises, we set aside the impugned order.

5.2 In result, appeal of the assessee is allowed.

**Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER**

**Sd/- (13.02.2025)
(PARESH M. JOSHI)
JUDICIAL MEMBER**

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar