

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "SMC" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.364/PUN/2023  
निर्धारण वर्ष / Assessment Years : 2016-17

Shashikant Sukdeo Ambekar, 10, Sadgurunagar, Nashik – 422007.  PAN: AAVPA 6177 F	Vs	The Income Tax Officer, Ward-2(1), Nashik.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Suresh Gawali – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	03/05/2023
Date of pronouncement	21/07/2023

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax(Appeal)National Faceless Appeal Centre, Delhi dated 31.01.2023 emanating from the penalty order dated 17.01.2022 under section 271(1)(c) of the Income Tax Act, 1961 for the A.Y.2016-17. The Assessee has raised the following grounds of appeal:

"1. The learned CIT is not justified in raising penalty u/s 271(1)(c) of Rs.1,33,020/- on the ground that the assesses has furnish inaccurate particulars of Income without appreciating that the said levy of penalty was riot justified in law.

2. *The learned CIT failed to appreciate that before the CIT, the assesses had duly explained that reporting of income in his case was attributable to wrong action of tax consultant and all the material facts relating thereto along with substantiating evidences in form of complaint filed against Tax Consultant before Economic Wing of Police Department etc. were also furnished by the assesses and therefore, the raised penalty u/s 271(1)(c) without rebutting the explanation offered by the assesses was not justified in view of provisions of the said Act.*

3. *The learned CIT ought to have appreciated that the bona fides of the explanation offered by assesses were established from the fact that the assesses, being salaried employee from technical background, was totally dependent upon the tax consultant for filing income tax return and no such incorrect claim was ever made by the assesses either in past years or in subsequent years and therefore, the levy of penalty u/s 271(1)(c) was not justified in 'dew of the explanation offered by the assesses.'*

**Brief Facts of the case :**

2. The assessee is an individual. The Assessee filed Original Return of Income electronically on 02/08/2016 for A.Y.2016-17 declaring total income of Rs.7,05,190/-. In the original return the assessee had claimed deduction under Chapter-VIA of the Act of Rs.1,87,000/-. Subsequently the assessee filed revised return of Income on 21/07/2017 electronically admitting Total Income of Rs.4,11,670/- and claiming deduction under Chapter

VI-A of Rs.3,11,000/- and refund of Rs.61,050/-. The case was reopened under section 147 of the I.T.Act, 1961. In response to the notice, appellant filed return declaring total income at Rs.7,49,590/- claiming deduction under Chapter-VI-A of Rs.1,50,868/-. The assessee did not claim any deduction under section 80D, 80DD, 80G and 80GG as claimed in the revised return of income. Assessment was completed on 22.09.2021 determining total income at Rs.7,49,590/-.

3. There was a survey in the case of Mr.Kishore Patil, Tax Practitioner. During the survey, it was observed that Mr.Kishore Patil had filed Returns of many individuals, claiming bogus deductions. Assessee was one of them. Therefore, notice under section 148 was issued and served on the assessee on 27.02.2018. The assessee filed return in response to notice under section 148 declaring total income of Rs.7,49,590/- which includes income from salary and other source. In this return the assessee claimed deduction under section 80C of Rs.1,37,400/-, under section 80CCC of Rs12,600/- and under section 80TTA of Rs.868 and thus making total claim of chapter VI-A deduction of Rs.1,50,868/-.

3.1 The AO discussed the issue at length in the assessment order. The AO accepted Return of Income filed in response to notice under section 148. The AO initiated penalty under section 271(1)(c) for concealment of particulars of income. In the assessment order, the AO has categorically mentioned that assessee had fraudulently obtained excess refund by fraudulently claiming loss from Income from House Property. Subsequently, the AO issued notice under section 271(1)(c) dated 17.01.2022. Subsequently, after giving opportunity to the assessee, AO passed penalty order under section 271(1)(c). Aggrieved by the same, the assessee filed appeal before the Id.CIT(A), who confirmed the penalty.

4. Aggrieved by the order of the Id.CIT(A), the assessee filed appeal before this Tribunal.

**Submission of Id.AR :**

5. The Id.AR submitted that assessee is a salaried employee and does not have any understanding of the Income Tax Laws. The assessee was given wrong advice by his Tax Practitioner. Assessee was not at all aware about the fraudulent means adopted by the Tax Practitioner. Ld.AR further submitted that

assessee has filed an FIR against the Tax Practitioner. This shows that assessee erred in filing the Revised Return under a bonafide belief and wrong advice by the Tax Practitioner. The ld.AR relied on the order of ITAT Pune in the case of Dinesh Sitaram Patil Vs. ITO in ITA No.56/PUN/2023 dated 30.03.2023.

**Submission of ld.DR :**

6. The ld.DR strongly relied on the orders of the Lower Authorities. Ld.DR submitted that the assessee is an educated person. The assessee was absolutely aware when he filed revised return claiming loss from house property. Assessee was well aware of the fact that there was no loss from house property under section 24 of the Act. Assessee was well aware of the fact that assessee has not taken any housing loan and has not paid any housing loan interest to claim deduction. Thus, knowing well all the facts, assessee consciously filed Revised Return to claim the excess refund. Though assessee may have been advised by the Tax Practitioner, but whether to accept wrong advice or not was always for the assessee. Thus, though in

penalty proceedings, *mens rea* is not required, but in this case, there is definitely a guilty mind of the assessee.

**Findings & Analysis :**

7. We have heard both the parties and perused the records. It is a fact in this case that assessee consciously filed Revised Return on 21.07.2017 with a claim of refund of Rs.61,050/- and deduction under Chapter VIA of Rs.3,11,000/-. Though assessee pleaded that his Tax Practitioner advised him, however, we do not intend to accept this plea as assessee is an educated individual, he was well aware of the fact he is not eligible for the deductions claimed. In spite of this fact, the assessee had filed the Revised Return claiming deductions. The assessee received refund with reference to the revised return. Thus, assessee was in the full knowledge of the facts. The assessee pleaded that the assessee filed an FIR against Tax Practitioner; however, this pleading does not help him. In this case, actions of the assessee were conscious actions. Assessee has consciously concealed the particulars of income. Assessee has consciously concealed the particulars of Income by making wrong claim and thus reduced the total income. In this case, it was only because of survey

conducted by Department, the wrong claims were detected. The assessee had never voluntarily disclosed his wrong claims.

8. The Hon'ble Delhi High Court in the case of Commissioner of Income Tax Vs. N.G.Technologies Ltd [2015] 370 ITR 7 (Delhi) has held as under in the identical facts :

*Quote, “ 16. We have examined the aforesaid reasoning but are unable to accept the said finding. All claims or deductions wrongly made cannot be treated as bona fide and protected by Explanation 1 to section 271(1)(c) of the Act. Whether or not the conduct of the assessee was legitimate or mere legerdemain would depend upon facts of each case, nature and character of the claim, whether the legal provision applicable was capable of two interpretations, whether the claim/exemption was plausible and conceivable, etc. In cases where interpretive skills and divergent views are plausible, penalty for concealment should not be imposed. The assessee need not be asked to pay penalty if he has taken a particular legal stand and preferred an interpretation in his favour. However, at the same time, the interpretation put forward or the claim made should not be banal or a ruse, per se or ex facie incorrect or wrong. Platitudinous conduct or claim is not a bona fide conduct.*

*17. In the facts of the present case, it is noticeable that the assessee had claimed loss on account of sale of plant and machinery, i.e., the fixed assets, in the profit and loss account. This should not have been obviously claimed. It was without any debate and discussion a capital loss. The claim cannot be explained and justified by any argument and reasoning. The claim was positively and meaningfully incorrect and contrary to the principles of straight forward and*

*primary accountancy. It is true and correct that an assessee would normally rely upon the legal opinion of a chartered accountant, who is required to audit accounts of the company and also submit an audit report but penalty cannot be deleted on guise or pretence of legal opinion as a smokescreen and facade. The claim or the entry in the present case was contrary to the elementary and well-known the basic principles of accountancy. The present case is not a case of a debatable issue relating to legal or accountancy principle which could have been interpreted differently.*

*18. It is mandatory and compulsory for a company to get their accounts audited from a chartered accountant, who is required to submit an audit report to be filed with the return. We cannot, therefore, accept the contention of the assessee as universal and comprehensive that all claims howsoever untenable, once certified by a chartered accountant or the directors of the company, cannot be made a subject matter of penalty proceedings. This will be stretching and making the requirement to prove bona fide conduct illusionary and ineffective and would fail to, check and stop fanciful and incredible claims. It is noticeable that most of the income-tax returns are accepted without scrutiny or regular assessment and self-compliance of tax provisions is a rule required to be followed. The view, which we have taken, is in consonance with the ratio expounded in Reliance Petroproducts (P.) Ltd. (supra).....*

*19...*

*20. Therefore, it is clear to us that the assessee had not filed revised return voluntarily but had filed the revised return after the Assessing Officer confronted the assessee and they were asked to explain how and why the loss on account of sale of fixed assets was claimed in*

*the profit and loss account. The said loss, capital in nature and could not have been claimed in the profit and loss account.*

*21. In view of the aforesaid discussion, we answer the substantial question of law in favour of the Revenue and against the respondent-assessee. We uphold levy of penalty by the Assessing Officer under section 271(1)(c) of the Act.” Unquote.*

7.2 Similarly, in the case of the present assessee the claim made by him was blatantly incorrect and it was made in order to conceal the true income. The present assessee has filed the return only on receipt of notice u/s.148, thus it was not voluntarily revised by the assessee. The assessee filed the correct return only on receipt of notice u/s.148. Therefore, the facts and circumstances in the case of NG Technologies Ltd and the present assessee are identical. Hence, the proposition of law explained by the Hon’ble Delhi High Court in the case of NG Technologies Ltd., are squarely applicable to the present assessee. The SLP of the Assessee in the case of NG Technologies Ltd., was dismissed by the Hon’ble Supreme Court [2016] 240 Taxman 6 (SC) [18-04-2016].

8.1 The Hon'ble Supreme Court in the case of Mak Data Pvt. Ltd., Vs. CIT in Civil Appeal No. 9772 of 2013 has held as under :

*Quote, "8. Assessee has only stated that he had surrendered the additional sum of Rs.40,74,000/- with a view to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the income tax department. Statute does not recognize those types of defenses under the explanation 1 to Section 271(1)(c) of the Act. It is trite law that the voluntary disclosure does not release the Appellant-assessee from the mischief of penal proceedings. The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty.*

*9. We are of the view that the surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings has noticed that certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed, have been impounded in the course of survey proceedings under Section 133A conducted on 16.12.2003, in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was*

*surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The AO, in our view, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961.*

*10. The AO has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing. The scope of Section 271(1)(c) has also been elaborately discussed by this Court in Union of India vs. Dharmendra Textile Processors (2008) 13 SCC 369 and CIT vs. Atul Mohan Bindal (2009) 9 SCC 589.*

*11. The principle laid down by this Court, in our view, has been correctly followed by the Revenue and we find no illegality in the department initiating penalty proceedings in the instant case. We, therefore, fully agree with the view of the High Court. Hence, the appeal lacks merit and is dismissed.” Unquote.*

9. In the case of the assessee Satish Pandurang Pawar also the assessee filed revised return only after receipt of notice u/s.148 which the AO issued after the Survey. Thus, the assessee had not made any voluntary disclosure in this case also rather as

observed by us the assessee deliberately made factually incorrect claim to conceal the income.

9.1 Therefore, respectfully following the Hon'ble Supreme Court(supra), the Hon'ble Delhi High Court(supra) for all the reasons discussed above, the penalty order is upheld.

10. We also find support from the decision of the Hon'ble Jurisdictional High Court.

10.1 The Hon'ble Bombay High Court in the case of Shanti Ramanang Sagar Vs. CIT 88 taxmann.com 72 (Bom) has held as under :

*“23. Once we come to this conclusion that we need not refer to the other judgments cited by Mr. Chhotaray but his reliance on an unreported judgment of the Hon'ble Supreme Court, rendered in the case of Mak Data (P.) Ltd. (supra) is equally accurate. This judgment essentially follows and applies the view in the case of Dharamendra Textile Processors (supra). Therefore, a voluntary disclosure in all cases cannot absolve the assessee from the liability to pay penalty.”*

10.2 Thus, the Hon'ble High Court laid down the proposition of Law that voluntary disclosure in all cases cannot absolve the assessee from penalty.

10.3 Thus, respectfully following the Hon'ble Supreme Court, the Hon'ble Jurisdictional High Court's decision and Hon'ble Delhi High Court in the case of NG Technologies Ltd (supra), the penalty order is confirmed. Accordingly, grounds of appeal raised by the assessee are dismissed.

11. The ld.AR had relied on the order of this Tribunal in the case of Dinesh Sitaram Patil in ITA No.66/PUN/2023. However, the facts in the case of Dinesh Sitaram Patil are different. The Tribunal in the case of Dinesh Sitaram Patil observed that AO had failed to strike off the relevant applicable limbs i.e. concealed the particulars of his income or furnished inaccurate particulars of such income, in the notice under section 271(1)(c), therefore, Tribunal deleted the penalty on Legal Ground. However, in the case no such thing has been brought to our notice by ld.AR. Hence, the case relied by Assessee is fraudulently distinguishable.

12. In the case of present assessee, the AO in the assessment order has specifically mentioned that penalty is being initiated for concealment of particulars of income. Thus, in the case under consideration the AO has rightly invoked penalty under

section 271(1)(c) of the Act. Therefore, the case relied by ld.AR is not applicable in the present case.

13. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 21<sup>st</sup> July, 2023.

Sd/-  
(S.S.GODARA)  
JUDICIAL MEMBER

Sd/-  
(DR. DIPAK P. RIPOTE)  
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 21<sup>st</sup> July, 2023/ SGR\*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.