

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1748/PUN/2024
निर्धारण वर्ष / Assessment Year : 2013-14

DCIT, Aurangabad.	Circle-1,	Vs.	Prabha Farms Private Limited, Akash, Paithan Road, Aurangabad- 431005. PAN : AACCP3782D
Appellant			Respondent

C. O. No.07/PUN/2025
(Arising out of ITA No.1748/PUN/2024)
निर्धारण वर्ष / Assessment Year : 2013-14

Prabha Farms Private Limited, Akash, Paithan Road, Aurangabad- 431005. PAN : AACCP3782D	Vs.	DCIT, Aurangabad.	Circle-1,
Appellant		Respondent	

Revenue by : Shri Arvind Desai
Assessee by : Shri N. R. Agrawal

Date of hearing : 24.02.2025
Date of pronouncement : 16.05.2025

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the Revenue is directed against the order dated 26.06.2024 passed by Ld. CIT(A)/NFAC for the assessment

year 2013-14. The assessee is also in cross objection against the appeal of the Revenue.

2. Facts of the case, in brief, are that the assessee is a private limited company engaged in agricultural activities and filed its return of income on 29.09.2013 declaring Nil income. During the course of assessment proceedings, the Assessing Officer found that the assessee has sold immovable properties i.e. agricultural land valued at Rs.3,16,12,500/-and Rs.99,65,485/-, however, no capital gain income was shown. The Assessing Officer found that the impugned agricultural land sold by the assessee is a capital asset since the same was situated within 8 kilometers from the municipal limits. However, according to the assessee, the land was not capital asset and therefore, no capital gain income was shown by the assessee in its return of income. The Assessing Officer completed the assessment u/s 143(3) of the IT Act on a total income of Rs.3,57,10,580/- and simultaneously initiated penalty proceedings u/s 271(1)(c) IT Act. The assessee preferred first appeal against quantum addition and when it was dismissed assessee preferred second appeal before the Tribunal. The Assessing Officer imposed penalty u/s 271(1)(c) of the IT Act of

Rs.77,24,199/-. Assessee preferred first appeal against imposition of penalty which was allowed by Ld. CIT(A) vide order dated 22.03.2017 and the penalty u/s 271(1)(c) of the IT Act was deleted. The Revenue filed second appeal before the Tribunal against the deletion of penalty. Vide order date 27.02.2020, the Tribunal restored the issue of quantum to the Assessing Officer as well as vide order dated 29.09.2020 the Tribunal also restored the issue of penalty back to the file of the Assessing Officer for fresh adjudication. The assessment order was passed afresh u/s 143(3) of the IT Act by making addition of Rs.3,37,17,595 and subsequently penalty u/s 271(1)(c) of the IT Act was also imposed at Rs.72,93,114/-. The assessee has not preferred further appeal against the quantum reassessment order however an appeal was preferred before Ld. CIT(A)/NFAC against the penalty order dated 27.09.2022. Ld. CIT(A)/NFAC allowed the appeal by deleting the penalty levied at Rs.72,93,114/- and this is the order against which the Revenue is in appeal before the Tribunal.

3. The Revenue has raised the following grounds of appeal :-

- “1. *Whether on the facts and in the circumstances, the CIT(A), has erred in deleting the penalty of Rs.72,93,114/- levied u/s.271(1)(c) of the Income Tax Act, 1961 as the assessee had made wrong claim of exempt income on sale of land despite the*

fact that the impugned land comes within the purview of Municipal limit of Aurangabad as certified by the Talathi and thus liable for taxation u/s.2(14) of the Act?

2. *Whether on the facts and in the circumstances, the CIT(A), has erred in giving relief to the assessee without appreciating the fact that the impugned land, sold by the assessee & thereon claimed exemption u/s.2(14) of the I.T. Act, 1961, is situated within 8 Km of Municipal limits of Aurangabad having population of more than ten thousand?*
3. *The order of the Assessing Officer may be restored and that of the CIT(A), NFAC, Delhi be vacated.*
4. *The appellant craves leave to add, amend or alter all or any of the grounds of appeal.”*

4. Ld. DR appearing from the side of the Revenue submitted before us that the order passed by Ld. CIT(A)/NFAC is unjustified. Ld. DR submitted before us that the assessee has made wrong claim of exempt income on sale of agricultural land despite the fact that the impugned land comes within the municipal limits as certified by the Talathi and accordingly the same was capital asset liable for taxation as per section 2(14) of the IT Act. Accordingly, it was requested before the Bench to set-aside the order passed by Ld. CIT(A)/NFAC wherein he deleted the penalty u/s 271(1)(c) of the IT Act and further requested to confirm the order passed by the Assessing Officer wherein he imposed penalty u/a 271(1)(c) of the IT Act.

5. Ld. AR appearing from the side of the assessee submitted before us that the order passed by Ld. CIT(A)/NFAC is justified. It was further submitted that this is the second consecutive time when Ld. CIT(A)/NFAC was pleased to delete the penalty levied u/s 271(1)(c) IT Act. Accordingly, Ld. AR relied on the order passed by Ld. CIT(A). Ld. AR further relied on the judgement passed by Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts Private Limited, [2010] 189 taxmann.com 322 (SC) wherein it was held that –

“there is no finding that any details supplied by the assessee in its return were found to be incorrect or false – merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not attract the penalty under section 271(1)(c) of the IT Act.”

6. Ld. AR further relied on the judgment passed by Hon'ble High Court of Andhra Pradesh in the case of PCIT vs. G.K. Properties Private Limited order dated 17th June, 2015 wherein judgment of Reliance Petroproducts Private Limited (supra) was followed & penalty was deleted. Accordingly, Ld. AR requested before the Bench to confirm the order passed by Ld. CIT(A)/NFAC wherein penalty u/s 271(1)(c) has been deleted and further requested to dismiss the appeal filed by the Revenue.

7. We have heard Ld. Counsels from both the sides and perused the material available on record. In this regard, we find that according to the assessee the agricultural land was not a capital asset as per the definition provided u/s 2(14) of the IT Act. It was the understanding of the assessee that the population of the concerned area was less than ten thousand and therefore it does not come within the definition of capital asset. However, subsequently, it was held by the Assessing Officer that since the concerned area falls within the municipal limits the population of the municipality was to be considered and therefore according to the Assessing Officer, the impugned agricultural land was capital asset and accordingly taxable income was determined by the Assessing Officer. We further find that nothing was concealed by the assessee since complete details of sales of the impugned agricultural land was disclosed in the return of income as well as in the books of accounts. It is the claim of non-agricultural land which was not accepted by the Department that resulted into addition of income and consequently resulted into imposition of penalty u/s 271(1)(c) of the IT Act. We find Ld. CIT(A)/NFAC has deleted the penalty imposed u/s 271(1)(c) of the IT Act by

relying on various judgements of Hon'ble Courts and the assessee also relied on the judgement passed in the case of Reliance Petroproducts Pvt. Ltd. (supra) wherein penalty u/s 271(1)(c) of the IT Act was deleted by observing as under :-

"9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as :—

"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.

10. It was tried to be suggested that section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its

Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that by itself would not, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature.

11. In this behalf the observations of this Court made in Sree Krishna Electricals v. State of Tamil Nadu [2009] 23 VST 249 as regards the penalty are apposite. In the aforementioned decision which pertained to the penalty proceedings in Tamil Nadu General Sales Tax Act, the Court had found that the authorities below had found that there were some incorrect statements made in the Return. However, the said transactions were reflected in the accounts of the assessee. This Court, therefore, observed :

"So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's account books. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities include these items in the dealer's turnover disallowing the exemption, penalty cannot be imposed. The penalty levied stands set aside."

The situation in the present case is still better as no fault has been found with the particulars submitted by the assessee in its Return.

12. The Tribunal, as well as, the Commissioner of Income-tax (Appeals) and the High Court have correctly reached this conclusion and, therefore, the appeal filed by the revenue has no merits and is dismissed."

8. Accordingly, in the light of judgement of Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. (supra), we do not find any infirmity in the order passed by Ld. CIT(A) deleting the penalty imposed u/s 271(1)(c) of the IT Act. The grounds raised by the Revenue are accordingly dismissed.

9. In the result, the appeal filed by the Revenue is dismissed.
10. Since we have dismissed the appeal filed by the Revenue, the cross objection filed by the assessee becomes infructuous and do not require any adjudication. Hence, the cross objection filed by the assessee is dismissed as such.
11. In the result, the appeal filed by the Revenue and cross objection filed by the assessee are dismissed, as indicated above.

Order pronounced on this 16th day of May, 2025.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 16th May, 2025.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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