

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'B' PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.474 & 2000/PUN/2017
निर्धारण वर्ष / Assessment Year : 2004-05

Eagle Flask Industries Pvt. Ltd., 4 th Floor, Parmar Gallery, Shivarkar Road, Wanowari, Pune – 411 047 PAN : AAACE4197M	Vs.	DCIT, Circle-8, Pune/ DCIT, Circle-14, Pune
Appellant		Respondent

Assessee by Shri M.K. Kulkarni
Revenue by Shri T. Vijaya Bhaskar Reddy
Date of hearing 02-09-2021
Date of pronouncement 02-09-2021

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the assessee are directed against two separate orders passed by the CIT(A)-6, Pune on 30-12-2016 confirming the penalty of Rs.3.20 crore imposed by the Assessing Officer (AO) u/s.271(1)(c) of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2004-05.

ITA No.474/PUN/2017 :

2. The first ground taken by the assessee is against the confirmation of penalty which was levied by the AO without any specific charge of either concealment or furnishing of inaccurate particulars of income.

3. We have heard both the sides through virtual court and gone through the relevant material on record. Shorn of unnecessary details, the primary issue is whether the levy of penalty on account of wrong striking out of the inapplicable limb of section 271(1)(c) of the Act from the notice issued u/s.274 is detrimental to the imposition of the penalty. Indubitably, there can be a case involving both the charges, viz., some of the additions or disallowance falling under the limb of 'concealment of income', while others under 'furnishing of inaccurate particulars of income'. In such a situation, there is no need to strike off any of the two.

4. Before testing the contention of the assessee under law, it is significant to find out the details of additions/disallowance culminating into penalty for determining, if these fall under any one or both of the limbs. On perusal of the penalty order, it can be seen that the penalty has been imposed with reference to disallowance u/s.43B; provisions made for unpaid octroi duty; excess depreciation; disallowance of advertisement and sales promotion expenses; sundry balances of debtors and advances written off. It is thus vivid that none of the items of additions relates to 'concealment of income' and all the items fall under the category of 'furnishing of inaccurate particulars of income'.

5. A copy of notice u/s 274 of the Act dated 26-12-2006 has been placed at page 28 of the paper book in which both the limbs, namely, concealing the particulars of income or furnishing of inaccurate particulars of income are present. In other words, there is no striking out of the irrelevant limb of the penalty. Thereafter, the penalty order came to be passed by the AO on 30-03-2010. In the first para itself, the AO again observed “that the penalty proceedings u/s.271(1)(c) of the I.T. Act 1961 vide notice dated 26/12/2006 was separately *initiated for concealment of income and filing inaccurate particulars of income.*” The penalty order was eventually passed by noticing that “the assessee has committed the default within the meaning of section 271(1)(c) of the I.T. Act, 1961, without any reasonable cause.” It is thus manifest that the AO not only initiated the penalty by means of notice u/s.274 r.w.s. 271(1)(c) without giving a specific charge but also levied the penalty under the same vague combined charge of both the limbs.

6. Recently, the full Bench of Hon’ble Bombay High Court in *Mohd. Farhan A. Shaikh Vs. Dy.CIT (2021) 125 taxmann.com 253 (Bom)* has considered this very issue. Answering the question in affirmative, the Full Bench held that a defect in notice of not striking out the irrelevant words vitiates the penalty even though the AO had

properly recorded the satisfaction for imposition of penalty in the order u/s 143(3) of the Act. In another judgment, the Hon'ble Bombay High Court in *Pr.CIT Vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxmann.com 248 (Bom)* also took similar view that where inapplicable portions were not struck off in the penalty notice, the penalty was vitiated. The SLP of the Department against this judgment has recently been dismissed by the Hon'ble Supreme Court in *Pr.CIT Vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxmann.com 249 (SC)*.

7. In view of the overwhelming legal position, it is clear that where the charge is not properly set out in the notice u/s 274, viz., both the limbs stand therein without striking off of the inapplicable limb, the penalty order gets vitiated. Turning to the facts of the extant case, we find from the notices u/s 274 of the Act that the AO did not strike out the irrelevant limb and further committed the same mistake in the penalty order as well. Respectfully following the Full Bench judgment of the Hon'ble jurisdictional High Court, we overturn the impugned order on this legal issue and direct to delete the penalty.

8. In the result, the appeal is allowed.

ITA No.2000/PUN/2017

9. This is an appeal against the order passed by the CIT(A) pursuant to the rectification order u/s.154 of the Act. In view of our decision in deleting the penalty in ITA No.474/PUN/2017, the instant appeal has been rendered infructuous. The same is, therefore, dismissed.

10. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 02nd September, 2021.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 02nd September, 2021
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The CIT(A)-6, Pune
3. The Pr.CIT-5, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	02-09-2021	Sr.PS
2.	Draft placed before author	02-09-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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