

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &  
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA NO.5229/MUM/2019 (A.Y.2015-16)

M/s Pal Synthetics Ltd.

41, Pal House, Marol Co-Operative Industrial Estate

Andheri Kurla Road, Sakinaka,

Andheri (E), Mumbai-400068

PAN: **AABCP9916A**

..... Appellant

Vs.

DCIT-10(3)(2),

Room No. 509, Churchgate,

Mumbai-400020

..... Respondent

Appellant by : Sh. Abhay Agarwal, AR

Respondent by : Sh. R.a. Dhyan, DR

Date of hearing : 30/11/2021

Date of pronouncement : 06/12/2021

**ORDER**

**PER LALIET KUMAR, J.M:**

This appeal has been filed by assessee challenging the order passed by the Commissioner of Income Tax (Appeals)-17, Mumbai [hereinafter referred to as 'the CIT(A)'] vide order dated 17.05.2019 on the ground mentioned in the present appeal.

Grounds of appeal		Tax effect relating to each Ground of appeal.
1	The Id. A.O. erred in levying Penalty under section 271(1)(c).	Rs. 7,49,717/-
2	Your petitioner craves leave to add, alter, amend and/or withdraw any/or all the above grounds of appeal.	
Total tax effect		Rs. 7,49,717/-

2. The Id. Authorized Representative (AR) for the assessee had filed the additional ground to the following effect:

3. Whether on the facts and circumstances, the show cause notice issued for levy of penalty u/s 271(1)(c) is vague and thus vitiates the penalty proceedings.

3. The Id. AR for the assessee had submitted that the additional ground raised by the assessee is required to be allowed , being legal in nature.

4. Per contra, the Id. Departmental Representative (DR) has no objection for admitting the ground.

5. We have heard the rival contentions of the parties and perused the material available on record and the reasons given in the application for admitting the additional ground. Admittedly, the additional ground raised by the assessee is a legal ground and no fresh document/ record is required to be referred or placed on record.

6. Considering the totality of facts, we admit the additional ground. The additional ground raised by the assessee is hereby admitted.

7. At the outset, the Id. AR for the assessee has submitted that the additional ground raised by the assessee goes to the root of the matter and

the same is required to be adjudicated by the Bench. Our attention was drawn at page no.1 of the Paper Book (PB) where the notice dated 15.12.2017 is placed. It was contentions of the Id. AR that the notice dated 15.12.2017 is non-speaking, cryptic and has not ticked the relevant clause for which the notice was issued.

8. It was submitted that in the absence of non-ticking of the relevant clause i.e. whether the notice was issued for incorrect particulars of income or for both, the proceeding cannot be initiated. He relied upon the decision of the Hon'ble jurisdictional High Court in the matter of Mohd. Farhan A. Shaikh Vs. DCIT (125 taxmann.com 253 (page 61 of PB) to buttress his argument. Further, the Id. AR had submitted there was no *mens rea* on the part of the assessee to declare the incorrect facts at the time of filing the return of income. Our attention was drawn to the balance-sheet for the previous and subsequent years and on the basis of the B/s , it was submitted that the assessee is a loss making company and merely because the assessee has wrongly shown the loss on the sale of asset as revenue loss instead of capital loss, would not give right to any tangible benefit to the assessee as the assessee would continuous to be loss making company. It was submitted that the assessee has brought the above said fact to the notice of the CIT(A), however, the CIT(A) has not agreed to the contention of the assessee.

9. Per contra, the Id. DR, relied upon the para-4.1 of the CIT(A) to the following effect:

“4.1 During penalty proceeding, the AO has discussed each and every argument of the appellant company in detail. As loss on sale of assets is a capital loss, in no way, the same can be claimed as a Revenue loss in the books of account. The act of claiming a Capital expense as a Revenue expense is nothing but furnishing of inaccurate particulars by the appellant company. In the light of landmark judgment discussed in above para, particularly, Reliance

Petro Products Pvt. Ltd.(Supra), it has to be examined whether the Claim is a bonafide claim or not. The assets, which has been sold is a part of block of assets and it does not have any independent existence as long as it is included in the block of assets. Wherever, the block of assets is reduced, the corresponding WDV is reduced. Profit or loss can be computed only when the block of assets, ceases to exist. Thus, there is no ambiguity that claim of loss on account of an individual asset out of a block of assets is not a bonafide claim. There cannot be two opinion of this issue. If so, then Explanation 1 to section 271(1)(c) is clearly attracted and out of a claim which is not bonafide, the appellatant company is liable for penalty u/s.271(1)(c) of the Act.”

and had further submitted that the requirement of *mens rea* is not essential for the purpose of imposing the penalty, once the assessee was found by the AO that the assessee has filed inaccurate particulars of income then levy of penalty is automatic.

10. We have heard the rival contention of the parties and perused the material available on record.

11. Firstly, we will deal with the additional ground raised by Id. AR for the assessee. Admittedly, the notice dated 15.12.2017 provides as under:

26/12/17 (1)

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**आयकर अधिनियम, 1961 की धारा 271 के साथ पढ़ी गई धारा 274 के अधीन सूचना**  
**NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF**  
**THE INCOME TAX ACT, 1961** **DCIT-10(3)(2)/SCR-54/Pg-15/2017-18**

सेवा में /  
**PAN:- AABCP9916A**

को,  
**M/s. PAL SYNTHETICS PVT LTD.**  
**41, PAL HOUSE,**  
**MAROL CO- OP INDL. ESTATE,**  
**ANDHERI (E)**  
**MUMBAI -400057**

आयकर कार्यालय/Office of the  
**Dy. Commissioner of Income**  
**Tax-Circle 10(3)(2), Mumbai**  
**R.No. 509, Aayakar Bhawan,**  
**M.K. Road, Mumbai 400020**

तारीख/Dated **15.12.2017**

**PEN -20/Pg. 33 /2017-18**

**PENALTY U/S 271 (1) (c) of I.T. Act, 1961**

युक्ति का निर्धारण वर्ष ..... के संबंध में मेरे यहां होने वाली कार्रवाई के दौरान मुझे प्रतीत होता है कि आपने :-  
 Whereas in the course of proceedings before me for the **Assessment Year 2015-16** it appears to me that You:-

\* बिना उचित कारण के वह आप विवरणी नहीं दी है जो आपको भारतीय आयकर अधिनियम, 1922 की 22(1), 22(2)/ 34 के अधीन दी गई सूचना के अनुसार देनी थीक या जो आपको धारा 139(1) के अधीन या आयकर अधिनियम, 1961 की धारा 139(2)/148 के अधीन दी गई सूचना में ..... द्वारा ..... अनुसार दायित्व करनी थीक क्योंकि उचित कारण के बिना आपने दिए गए समय के अन्दर और उक्त धारा 139(1) या इस प्रकार की सूचना द्वारा अनुचित तरीके से विवरणी नहीं दी है।  
 \* Have without reasonable cause failed to furnish the return of income which you were required to furnish by a notice given under Section 139 (2)/148 of the Income Tax Act, 1961 No. .... dated ..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

\* बिना उचित कारण के आपने भारतीय आयकर अधिनियम, 1922 की धारा 22(4)/23(2) या आयकर अधिनियम, 1961 की धारा 142(1)/143(2) के अधीन दी गई सूचना में ..... द्वारा ..... का अनुपालन नहीं किया है।  
 \* Have without reasonable cause failed to comply with a notice under Section 22(4) / 23(2) of the Indian Income-tax Act, 1922 or under Section 142(1) / 143(2) of the Income-Tax Act, 1961, No. .... dated .....

\* अपनी आय के बारे में सही जानकारी नहीं दी है या ..... इस प्रकार की आय के बारे में सही जानकारी नहीं दी है।  
 \* have Concealed the particulars of your income or ..... Furnished inaccurate particulars of such income.

आपको एवद्वारा सूचित किया जाता है कि आप, ..... 200 ..... को वहां ..... म.म./पु.म. में आप के कार्यालय में उपस्थित हों और कारण बताएं कि आयकर अधिनियम, 1961 की धारा 271 के अधीन आप पर इस सगले का आदेश क्यों न दिया जाए। यदि आप स्वयं उपस्थित होकर या अधिकृत प्रतिनिधि द्वारा सूचनाई के लिए दिए गए अवसर का लाभ नहीं उठाते, तो उक्त आदेश को या अपने पूर्व लिखित इसका कारण बताएं, जिस पर धारा 271 के अधीन कोई ऐसा आदेश देने से पूर्व विचार किया जाएगा।

You are hereby requested to appear before me **On 15.01.2018 at 11.40 A.M.**, and Show cause why an order imposing a penalty on you should not be made under Section 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized 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).

(MANOJ KUMAR MISHRA)  
 Dy. Commissioner of Income-tax  
 Circle 10(3)(2), Mumbai.

(Seal)

\* जो शब्द या धरे अनवश्यक हों उन्हें काट दीजिए  
 \* Delete in appropriate words and Paragraphs.

12. If we look into the notice, either there was no ticking of either of the clause or there was ticking of one of the clause. If we assume that the AO while issuing the notice for penalty has imposed the penalty on account of furnishing inaccurate particulars of income and not concealing the particulars of income. In that case if we look into para 6 of Penalty order, it is abundantly clear that the AO had imposed the penalty for concealing the

income and furnishing the inaccurate particulars of income. Further, if we look into the order passed by CIT(A), the CIT(A) in paragraph-4.1 reproduced herein above, it clearly shows that the penalty was imposed on the assessee for inaccurate particulars of income.

13. In our considered opinion, it is mandatory as per the law laid down by the Hon'ble jurisdictional High Court in the case of Mohd. Farhan A. Shaikh (supra) to specifically mention the charge for which the penalty was imposed. In the present case, the AO has imposed the penalty for both i.e. concealment of income and furnishing of inaccurate particulars of income, whereas the notice, was issued only for the incorrect particulars of income.

14. In our considered opinion, the same is not sustainable in terms of the law laid down by the jurisdictional High Court in the matter of Mohd. Farhan A. Shaikh (supra).

15. In view of the above, we are of the facts that the notice imposing the penalty was vague, imprecise and incapable of clear understanding, therefore, the proceeding initiated on such notice is liable to be quashed. In view of the above, we are of the considered opinion that the penalty initiated against the assessee are also liable to be quashed.

15.1 We may further mention that the assessee being loss making company, is not going to gain anything by wrongly declaring the loss on sale of asset as revenue loss instead of capital loss, as in our view it is tax neutral. Therefore, no malafide intention to conceal the income or particulars of income can be attributed to the assessee. For the above said purpose, we may further relied upon the decision of the Hon'ble Supreme Court in the matter of **Price Water Cooper Pvt. Ltd. Vs. CIT (348 ITR 306)** for the said purposes.

16. Respectfully following the decision of the Hon'ble Supreme Court and on merit also we are of the opinion that the penalty imposed on the assessee is also liable to be deleted. In the result, the penalty imposed against the assessee is deleted on account of vague and improper notice as well as on merit.

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

Order pronounced in the court on 06.12.2021.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Sd/-  
(LALIET KUMAR)  
JUDICIAL MEMBER

मुंबई/Mumbai,  
SK, PS

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai