

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

(Through Virtual Court)

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI RATHOD KAMLESH JAYANTBHAI, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA Nos. 161 & 162/RPR/2018
निर्धारणवर्ष / Assessment Years : 2013-14 & 2014-15

Vikash Nashine
E-121, Surya Vihar, Junwani,
Bhilai, Dist. Durg (C.G.)

PAN : ABPPN0681G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax-1(1),
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R Rao, AR
Revenue by : Shri G.N Singh, DR

सुनवाई की तारीख / Date of Hearing : 01.06.2022
घोषणा की तारीख / Date of Pronouncement : 02.06.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee are directed against the respective orders passed by the CIT(Appeals)-II, Raipur dated 24.04.2018 & 15.05.2018, which in turn arises from the orders passed by the A.O under Sec. 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') dated 30.12.2016 for the assessment years 2013-14 & 2014-15. As the issues involved in the captioned appeals are inextricably interlinked or in fact interwoven, therefore, the same are being taken up and disposed off together by way of a common order. We shall first take up the appeal filed by the assessee for the assessment year 2013-14 wherein the assessee has assailed the impugned order on the following grounds of appeal before us:

"1. In the facts and circumstances of the case and in law, the learned Assessing Officer is not justified in imposing penalty of Rs. 31,730/- u/s.271(1)(c) of the Income-tax Act, 1961.

2. The impugned order is bad in law and on facts.

Additional Ground:-

3. In the facts and circumstances of the case and in law the learned Commissioner of Income-tax (Appeals) has erred in dismissing the appeal by confirming the penalty order which is illegal, bad-in-law and without jurisdiction being based on show cause notice issued u/s 274 read with section 271(1)(c) of the Income-tax Act, 1961 without specifying the nature of default i.e. whether there is concealment of income or furnishing of inaccurate particulars of income and contrary to the law laid down by Hon'ble Supreme Court in the case of CIT Vs SSA's Emerald Meadows in SLP CC No. 11485/2016.

4. The Appellant reserves right to add, alter, amend, omit, and withdraw any of the grounds of appeal."

2. Succinctly stated, on the basis of information gathered in the course of survey proceedings conducted on Shri. Vijayendra Rongde, that the assessee as a beneficiary had availed his services for suppressing his returned income by reducing the amount of perquisite and/or salary arrears, the AO reopened his case u/s.147 of the Act. In compliance, the assessee filed his return of income disclosing gross total income of Rs.15,63,724/-. Observing, that the assessee had come forth with a correct disclosure of his income only on receipt of a 'Show Cause Notice' (SCN) issued u/s.276C of the Act, the A.O while culminating the assessment vide his order passed u/s.143(3)/147 dated 29.06.2016 initiated penalty proceedings u/s.271(1)(c) of the Act alleging 'concealment of income' by him.

3. Subsequently, the A.O vide his order passed u/s. 271(1)(c), dated 30.12.2016 imposed a penalty of Rs.31,730/- on the assessee for both the defaults contemplated in the aforesaid statutory provision i.e., 'concealment of income' and 'furnishing of inaccurate particulars of income'.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. We have heard the Id. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Id. AR in order to drive home his contentions. At the outset it was submitted by the Id. AR that as the AO had in the SCN, dated 29.06.2016 failed to strike off the irrelevant default, therefore, he had wrongly assumed jurisdiction and imposed the impugned penalty on the assessee. Admittedly, it is a matter of fact borne from record that the A.O in the 'SCN' dated 29.06.2016 that was issued a/w the assessment order had while initiating the penalty proceedings u/s. 271(1)(c) of the Act, failed to strike off the irrelevant default i.e. 'concealment of income' OR 'furnishing of inaccurate particulars of income' for which the impugned penalty proceedings had been initiated by him. But then, we find that A.O had vide another 'SCN' dated 23.11.2016 called upon the assessee to show cause as to why penalty u/s.271(1)(c) may not be imposed on him. However, as the contents of the aforesaid SCN dated 23.11.2016 are neither discernible from the records nor brought to our notice us by the Ld. Authorized Representative (for short 'AR') for the assessee, therefore, in absence of complete facts/records before us, we are unable to concur with the Ld. AR that as the A.O had while initiating penalty proceedings failed to strike off the relevant default in the body of the 'SCN', therefore, he had invalidly assumed jurisdiction and imposed penalty on the assessee.

7. Be that as it may, we find that though the AO while framing the assessment vide his order passed u/s.143(3)/147 of the Act dated 29.06.2016, had initiated penalty proceedings u/s.271(1)(c) alleging that the assessee had concealed his income, however, the same, thereafter, had been imposed by him vide his order passed u/s.271(1)(c) of the Act dated 30.12.2016 for both the defaults i.e. 'concealment of income' and 'furnishing of inaccurate particulars of income. In our considered view, as both the defaults i.e. 'concealment of income' and 'furnishing of inaccurate particulars of income' are separate and distinct default which operates in their exclusive fields, therefore, imposition of penalty by the A.O qua the aforesaid solitary addition for both of the aforesaid defaults contemplated in Section 271(1)(c) of the Act cannot not be sustained and is liable to be struck down on the said count itself. We find that the fine distinction between the said two defaults contemplated in Sec. 271(1)(c), viz. 'concealment of income' and 'furnishing of inaccurate particulars of income' had been appreciated at length by the **Hon'ble Supreme Court** in its judgments passed in the case of **Dilip & Shroff Vs. Jt. CIT (2007) 210 CTR (SC) 228** and **T. Ashok Pai Vs. CIT (2007) 292 ITR 11 (SC)**. The Hon'ble Apex Court in its aforesaid judgments, had observed, that the two expressions, viz. 'concealment of particulars of income' and 'furnishing of inaccurate particulars of income' have different connotation. We are of the considered view, that now when the AO while culminating the assessment had in the body of the assessment order initiated the impugned penalty u/s

271(1)(c) for the default i.e 'concealment of income', therefore, there was no justification on his part in imposing the same for both the defaults i.e 'concealment of income' and 'furnishing of inaccurate particulars of income'. We, thus, for the aforesaid reasons not being able to persuade ourselves to subscribe to the imposition of penalty by the A.O, therefore, set-aside the order of the CIT(A) who had upheld the same. The penalty of Rs.31,730/- imposed by the A.O under Sec.271(1)(c) is quashed in terms of our aforesaid observations.

8. In the result, the appeal of the assessee in ITA No.161/RPR/2018 for the assessment year 2013-14 is allowed in terms of our aforesaid observations.

ITA No.162/RPR/2018
A.Y.2014-15

9. As the facts and the issue involved in the present appeal remains the same as were there before us in the aforementioned appeal of the assessee in ITA No.161/RPR/2018 for assessment year 2013-14, therefore, our order therein passed while disposing off the said appeal shall apply mutatis-mutandis for disposing off the present appeal in ITA No.162/RPR/2018 for the assessment year 2014-15. In this case also, we set-aside the order of the CIT(A) and the penalty of Rs.47,080/- imposed by the A.O under Sec.271(1)(c) is quashed with similar terms and observations as mentioned while adjudicating the appeal in in ITA No.161/RPR/2018 for assessment year 2013-14.

10. In the result, the appeal of the assessee in ITA No.162/RPR/2018 for the assessment year 2014-15 is allowed in terms of our aforesaid observations.

11. In the combined result, both the appeals of the assessee are allowed in terms of our aforesaid observations.

Order pronounced in open court on 02nd day of June, 2022.

Sd/-
RATHOD KAMLESH JAYANTBHAI
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 2nd June, 2022

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-II, Raipur (C.G)
4. The Pr. CIT-II, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	01.06.2022	Sr.PS/PS
2	Draft placed before author	01.06.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		