

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL “A”
BENCH, PUNE

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

आयकरअपीलसं. / ITA No.1887/PUN/2019
निर्धारणवर्ष / Assessment Year : 2015-16

Kishor Madhav Paranjape, 1139/516, Venu Apts, Off F C Road, Shivajinagar, Pune – 411016. PAN: ABIPP 3973 A	Vs	The DCIT, Central Circle-2(2), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Suhas P Bora – AR
Revenue by	Shri S P Walimbe– DR
Date of hearing	28/06/2022
Date of pronouncement	30/06/2022

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(Appeals)-12, Pune for the Assessment Year 2015-16, dated 23.09.2019.

2. The facts emanating from the Assessment order and Penalty order are that the assessee is an Individual deriving income from business. He is a partner in various firms, earning share of profit, interest on capital and remuneration from partnership firms. It is pertinent to note that all the firms wherein the assessee is a partner, are all engaged in the business of Land Development and Building Construction. The assessee filed his return of income for Assessment

Year 2015-16 on 24/09/2015, declaring total income at Rs.49,34,500/-.No agricultural income shown.

2.1 During the assessment proceedings the Assessing Officer(AO) observed that the assessee has not disclosed Capital Gain on sale of Land. The AO after hearing the assessee added the Capital gain and also initiated penalty for concealment of income. The AO also made addition of undisclosed interest. The assessee has not preferred any appeal against the quantum of addition. The AO levied the Penalty u/s 271(1)(c) of the Act.

3. The Assessing Officer has mentioned in his order under section 271(1)(c) of the Act as under:

Quote “While verifying, the source of the deposits, it was seen that the assessee’s bank account with HDFC Bank, Bhandarkar Road branch was credited with Rs 26,51,000/- on 20/10/2014 & Rs 26,51,000/- on 31/10/2014. The assessee explained that the said deposits represented sale consideration of his land at MaujeBhukum, Khatpewadi vide agreements dated 17/10/2014 registered vide No 3634/2014 & 3635/2014 with Shri Nandkishor Chaudhary & Smt. Vijayalaxmi Chaudhary. It was further submitted vide submission dtd 05/12/2017 that the capital gain on the sale of aforesaid lands was not included in the return of income filed for AY 2015-16, under the bonafide belief that the land in question was situated beyond 8 Kms from the limits of Pune city. Hence it was inferred that the land did not come within the meaning of ‘capital asset’ u/s 2(14) of the I T Act. A certificate to the effect was also issued by the Talathi of Bhukum/Bhugaon. However, the

transactions were entered in books of accounts maintained by the assessee. This being the factual background, the assessee stated that inadvertently the income was not offered for taxation in the return filed for AY 2015-16. It was also submitted that, the assessee wanted to voluntarily offer the income to tax. Further in letter dated 19/12/2017, the assessee once again expressed that he had inadvertently not offered the capital gain on sale of land at Bhukum for tax and on realizing the mistake he was voluntarily offering the income to tax without being asked anything by the assessing officer in this regard. He filed a revised computation of income and paid the applicable taxes. The assessing officer in his order observed that the claim of the assessee of voluntary offer of income on Capital Gain was an afterthought and was not a bonafide offer. The assessing officer has also perceived that assessee was having sufficient resources to assess the implications of the transactions entered into on the assessee's taxable income. Hence the claim of the assessee that failure to offer the income from capital gain was an inadvertent mistake, has been rejected by the assessing officer. The Assessing Officer added the Long Term Capital gains of Rs.50,05,237/-. The income was assessed at Rs.99,48,880/- and proceedings u/s 271 (l)(c) of the I T Act for concealment of income were initiated.

The factual position arising is that the assessee had purchased land at Bhukum on 05/04/2006. The said transaction of purchase was not recorded in the Books of Accounts. Subsequently, the land was sold in FY 2014-15 relevant to AY 2015-16. The income arising from sale of land at Bhukum was not disclosed in the regular return of income filed by the assessee.

Further, in the assessment order, penal proceedings have also been initiated for concealment of income on account of interest amounting to Rs. 8,414/- received by the assessee in his bank

*account with Lokmanya Multipurpose Cooperative Society Limited. However, the assessee has not furnished any submission on this. It is therefore inferred that the assessee has no say on this issue and accordingly the assessee is found to be liable for penalty u/s 271(l)(c) of the I T Act, for concealing the said income on account of interest of Rs. 8,414/-."*Unquote.

3.1 Aggrieved by the order of the AO the Assessee filed appeal before the Id.Commissioner of Income Tax(Appeal). The Id.CIT(A) upheld the Penalty order.

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

5. The Ground No.1: The appellant assessee has claimed that the penalty order has been passed beyond the statutory time limit mentioned in the Act. It is observed that the Penalty Order was passed on 07/06/2018. The Assessment order u/s 143(3) was passed on 20/12/2017. The Penalty notice u/s 271(1)(c) was issued on 20/12/2017. There is no dispute on these dates. Thus, the penalty order was passed within Six(06) months of passing the assessment order. The relevant Section 275 is reproduced here as under :

Section 275. (1) *No order imposing a penalty under this Chapter shall be passed—*

(a) in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate

Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the⁸[Principal Chief Commissioner or] Chief Commissioner or⁸[Principal Commissioner or] Commissioner, whichever period expires later :

Provided *that in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A, and the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the⁸[Principal Chief Commissioner or] Chief Commissioner or⁸[Principal Commissioner or] Commissioner, whichever is later;*

(b) in a case where the relevant assessment or other order is the subject-matter of revision under section 263 or section 264, after the expiry of six months from the end of the month in which such order of revision is passed;

(c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.”

5.1. In the case under consideration Section 275(1)(c) will be

applicable because there is no appeal against the additions made in the assessment order. The statutory time limit to pass the Penalty order is 6 months or end of the financial year whichever is later, if the assessee has not preferred any appeal against the additions made in the assessment order.

5.2. It is observed that the Penalty Order was passed within Six(06) months of passing the assessment order. Hence it was passed withintime. Thus, the Ground No.1 of the appellant assessee is dismissed.

Ground Nos. 2 & 3 :

6. The Id.Authorised Representative(ld.AR) of the assessee submitted that the assessee has failed to offer the Capital gain under the bonafide belief that the land is outside the statutory limit of 8 kms hence the sale is not taxable as capital gain. The AR also submitted that as soon as the mistake was realized the assessee filed the revised computation of Income. Therefore, the Ld.AR vehemently submitted that there was a bonafide mistake. Hence Penalty cannot be levied. The Ld.AR also submitted certain documents to establish that the land was agricultural land and beyond 8 kms. The LD.AR admitted that these documents were not filed before the ld.CIT(A) and AO. The Ld.AR requested to admit the additional evidence as it goes to the root of the issue.

6.2 The Ld.Departmental Representative(ld.DR) for the Revenue submitted that the assessee is a renowned Builder. He is in the profession of Development of land, construction of Buildings, sale of land for many years through his firms. The Ld.DR further submitted that the Assessee have support of legal experts and CAs. The ld.DR for the Revenue further submitted that only on verification of Bank accounts the Assessing Officer noted the transaction and confronted it to the assessee, then the assessee accepted it. Thus, the claim of the assessee that he voluntarily offered the income is factually incorrect. Ld.DR further submitted that the assessee vide letter dated 05/12/2017 has admitted that the aerial distance is less than 8 km. The Ld.DR opposed the admission of additional evidence.

7. We have heard both the parties and have gone through the orders of the Lower Authorities.It is a fact that during the scrutiny proceedings the AO asked assessee to explain the deposits appearing in the HDFC bank. Vide letter dated 05/12/2017, the assessee accepted the fact of Sale of land, but it was only after the AO had issued a notice dated 27/11/2017. Thus, the so-called act of the assessee offering the Capital gain was not a voluntary act but it was in response to notice issued by the AO. The assessee's claim that he was not aware about the distance seems to be farfetched because the assessee is in the business of Construction, he is well aware about the

facts, also he has support of experts. The assessee in his letters dated 19/12/2017 & 05/12/2017 had claimed that the land was agricultural land and believed to be outside 8 km of city hence it was not a capital asset under section 2(14) of the Act. However, it is observed that the Assessee has not shown any agricultural income during the year. **The assessee has placed reliance on the letter issued by the TALATHI (land revenue officer), however, on perusal of the said letter it is observed that the said letter is dated 24/11/2017, it means the said letter was obtained by the assessee only after receipt of the notice of the AO.** Also, Talathi has vaguely mentioned that the land is approximately at a distance of 9 km. No where the Talathi has mentioned the basis on which he has arrived at the said conclusion. These are civil proceedings and mens-rea need not be proved.

7.1. The Hon'ble Supreme Court in the case of Dharmendra Textile Processor 295 ITR 244 has observed as under :

Quote “ it may be pointed out that the object behind enactment of section 271(1)(c) read with the Explanations quoted above indicates that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under the said section is a civil liability. Wilful concealment is not an essential ingredient for attracting the civil liability as is the case in the matter of prosecution under section 276C of the Act. While considering an appeal against an order made under section 271(1)(c) what is required to be examined is the record which the officer imposing

the penalty had before him and if that record can sustain the finding there had been concealment, that would be sufficient to sustain the penalty” Unquote.

7.2. Applying the above observation of the Hon’ble Supreme Court, the facts in this case are clear that the records shows there was concealment of income from sale of land.

7.3. Hon’ble Madras High Court in the case of Gangotri Textiles Ltd. Vs. DCIT [2020] 121 taxmann.com 171 (Madras) has held as under:

Quote, “4. The assessment for the year under consideration, AY 2012-13 was completed under section 143(3) of the Act by order dated 12-3-2015. During the course of the scrutiny assessment, the Assessing Officer noticed that the assessee had sold two landed properties at Kalapatti and Dharapuram and the capital gain was worked out for both the properties at Rs. 1,37,31,142/-. However this was not admitted by the assessee in the return of income.....

14. We have carefully perused the penalty order dated 25-9-2015 and we find that the Assessing Officer considered all the factual aspects raised by the assessee and rejected the same to be absolutely without bonafides. The decisions relied on by the assessee were also taken note of and each of the decisions was dealt with. The Assessing Officer placed reliance on the decision of the Hon'ble Supreme Court in Mak Data (P.) Ltd. (supra) and stated that voluntary disclosure does not release the assessee from mischief of penalty proceedings under section 271(1)(c) of the Act. Therefore, we find that the penalty order is a reasoned order.

15. The learned counsel had argued that the defect in the penalty notice is a question of law which can be raised by the assessee at any point of time. We have considered this submission and we have rejected it. The learned counsel relied on the decision of the Hon'ble Supreme Court in the case of K. Lubna to submit that if the factual foundation for a case has been laid and the legal consequences of the same having been examined, the examination of such legal consequences would be a pure question of law. We have noted the factual position. The assessee understood the notice to be under both heads, namely, furnishing of inaccurate particulars and concealment of income. This is evident from the assessee's reply dated 8-4-2015 to the show cause notice dated 12-3-2015. Therefore, the decision in the case of K. Lubna does not help the assessee, as there is no substantial question of law arising from such contention.

16. The learned counsel argued that the financial condition of the assessee Company was also a relevant factor to assess their bona fides. This contention cannot be accepted because the settled legal position is that penalty cannot be cancelled on the mere ground that return of income and assessed income was a loss. In the said decision, the Hon'ble Supreme Court had relied upon the decision in the case of CIT v. Gold Coin Health Food (P.) Ltd. [2008] 172 Taxman 386/304 ITR 308 wherein it was held that Explanation 4(a) to Section 271(1)(c)(iii) is intended to levy penalty not only in a case where after addition of concealed income, a loss returned, after assessment becomes positive income, but also in a case where addition of concealed income reduces the returned loss and finally the assessed income is also a loss or a minor figure. In this regard, it will be beneficial to refer to the decision in Union of India v. Dharmendra Textile Processors [2008] 174 Taxman 571/306 ITR 277(SC), which has been referred to and relied on in the case of N. G. Technologies Ltd.

17. As against the decision in the case of Jivanlal and Sons, a Special Leave Petition filed against the decision of the High Court which confirmed the penalty order passed by the Tribunal rejecting the assessee's explanation that it had claimed deduction on wrong advice given by the Chartered Accountant was dismissed. The operative portion of the judgment of the High Court of Bombay in Jivanlal & Sons v. Asstt. CIT [2019] 103 taxmann.com 207 is as follows:

2. We are unable to agree for more than one reason. The assessee is a Firm. It was throughout being advised and represented by a Chartered Accountant. The Tribunal rightly proceeded on the basis that a Chartered Accountant is deemed to be aware of the law and its intricacies. Being a professional, he could not have committed a mistake as was attributed to him. The tax paid is undisputedly an inadmissible expenditure from the profits of the business. Hence this amount should have been statutorily added back. Further, from the computation of income, the assessee added back certain inadmissible expenditure. However, he excluded the amount of income tax paid to the extent of Rs. 48,90,114/-. Thus, the addition was only partial and not full. Unless and until the legal provision then in force permitted exclusion of the amount of income tax already paid, the Chartered Accountant could not have done this. The Chartered Accountant cannot feign ignorance of Section 40(ii) of the Income-tax Act as he is well trained and well versed in law representing not only the assessee, but various other clients. As far as the assessee's malafide intention is concerned, the burden was entirely on the assessee to then show in terms of Explanation-I to the provision permitting imposition of penalty that such intention never existed when the above act was committed. For that, there was no material either in the form of evidence of the assessee or the affidavit of the Chartered Accountant. Hence the Commissioner

was right, according to the Tribunal, in imposing this penalty. The attempt to blame the Chartered Accountant cannot result in the assessee's exoneration and claimed in absolute terms. In the circumstances, the penalty was rightly imposed.

18. Thus, for the above reasons, we find that the order passed by the Tribunal does not call for any interference and the Substantial Questions of law framed for consideration have to be answered against the assessee.

19. In the result, the tax case appeal is dismissed and the Substantial Questions of law are answered against the assessee. ”
Unquote.

7.4. The SLP filed by the assessee Gangotri Textile in the above case has been dismissed by the Hon'ble Supreme court.

8. Therefore, we are of the opinion that on the facts of the case as they exist at the time of penalty order, there is concealment of income by the assessee from sale of impugned land. However, the assessee has now filed additional evidence to claim that the land is agricultural land and beyond 8 kms. Therefore, in the interest of justice, we set aside the Penalty levied on the issue of sale of impugned land to the file of the assessing officer with a direction to decide the issue afresh after giving opportunity to the assessee. The Assessee is directed to file all the relevant documents before the AO. The AO shall also verify from the returns and other documents whether the assessee had offered income from agricultural activity

from the impugned land in earlier years. The Assessing Officer shall be at liberty to collect necessary evidence independently.

8.1 We specifically mention here that we have gone through the Penalty notice issued by the AO, it was observed that the AO has struck off the appropriate words in the penalty notice. The Penalty Notice has been specifically issued for concealment of Income.

8.2 The AO has also levied the penalty for concealing the interest income of Rs.8414/-. We set aside this issue also to the file of the AO to decide a fresh after conducting necessary inquiries and after giving opportunity to the assessee.

8.3. Thus, the Penalty Order under section 271(1)(c) of the Act is set aside and Assessee's Ground Nos.2 & 3 are allowed for statistical purpose.

9. Ground No.4 is general in nature and does not need any adjudication, therefore, this Ground No.4 is dismissed.

10. In the result, appeal of the Assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on 30th June, 2022.

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

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

पुणे / Pune; दिनांक / Dated : 30th June, 2022/ 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, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.