

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

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

आयकर अपीलसं. / ITA No.1951/PUN/2018
निर्धारण वर्ष / Assessment Year : 2007-08

Lear Automotive India Pvt. Ltd., E-25, 26 & 27, Bhosari MIDC, Pune – 411026. PAN: AAACL 1978 K	Vs	The Assistant Commissioner of Income Tax, Circle-9, Pune.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Dhanesh Bafna & Chandani Shah – AR(s)
Revenue by	Shri Ramnath P Murkunde – DR
Date of hearing	20/10/2022
Date of pronouncement	04/11/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of ld.Commissioner of Income Tax(Appeals)-6, Pune, dated 01.11.2018 for the A.Y. 2007-08 under section 250 of the Income Tax Act, 1961(in short “the Act”). The Assessee has raised the following grounds of appeal:

“1. Erroneous levy of penalty under section 271(1)(c)

On the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) - 6 (‘the Ld. CIT(A)’) erred in upholding the action of Ld. Assistant Commissioner of Income-tax, Circle - 9 (‘the Ld.AO’) of levying penalty, being 100% of tax on the addition to returned income amounting to INR 38,37,270, under section 271(1)(c) of the Act.

Rs.38,37,270/-.

2. Penalty proceedings under section 271(1)(c) are invalid

On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the action of the Ld. AO for

initiating the penalty proceedings without specifying the reason for penalty initiation under section 274 read with section 271(1)(c) of the Act.

Rs.38,37,270/-.

The Appellant prays that the notice initiating penalty is ambiguous in the absence of clear mention of the limb under which penalty is initiated, the notice is therefore invalid and the penalty is unsustainable hence the penalty proceedings ought to be dropped.

3. Erroneous levy of penalty under explanation 7 to section 271(1) (c)

On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the action of the Ld. AO for levying penalty, being 100% of tax on the addition to returned income amounting to INR 38,37,270, under explanation 7 to section 271(1)(c) without taking cognizance of the fact that the Appellant has exercised due diligence in determining the arms' length price of international transactions.

Rs.38,37,270/-.

The Appellant prays that it has exercised due diligence in determining the arms' length price of international transactions and thus provisions of explanation 7 to section 271(1)(c) should not apply. Accordingly, penalty levied in this regard ought to be deleted.

4. Erroneous levy of penalty for furnishing of inaccurate particulars u/s 271(1)(c)

On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the action of the Ld. AO for levying penalty being 100% of tax on addition to returned income amounting to INR 38,37,270, under explanation 7 to section 271(1)(c) without taking cognizance of the fact that transfer pricing adjustment had arisen merely on account of difference of opinion on inclusion of comparables which was not contested by the Appellant to buy peace of mind.

Rs.38,37,270/-.

The Appellant prays that the transfer pricing adjustment arisen on account of difference of opinion on inclusion of comparables by the appellant and revenue cannot lead to a conclusion of furnishing of inaccurate particulars and thus the penalty levied in this regard, u/s 271(1)(c) ought to be deleted.

5. Erroneous levy of penalty for furnishing of inaccurate particulars u/s 271(1)(c)

On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the action of the Ld. AO for levying

penalty being 100% of tax on addition to returned income amounting to INR 38,37,270, under section 271(1X0) for furnishing inaccurate particulars on the ground that there is a difference between the assessed income and the returned income.

Rs.38,37,270/-.

The Appellant prays that additions made to returned income do not automatically lead to levy of penalty and thus penalty levied in this regard, u/s 271(1)(c) ought to be deleted.”

2. At the outset, the Id.Authorised Representative(ld.AR) of the assessee submitted that the notice under section 271(1)(c) issued by the AO is defective as the Assessing Officer(AO) has failed to specify whether the notice has been issued for filing inaccurate particulars of income or for concealment of income. This goes to the route of the initiation of penalty and therefore, the penalty order is bad in law. The ld.AR relied on the Hon’ble Bombay High Court decision Ganga Iron & Steel Trading Co. v/s Commissioner of Income Tax. [2022] 135 taxmann.com 244 (Bombay).

3. The ld.Departmental Representative(ld.DR) for the Revenue could not rebut the submission of the Id.Authorised Representative.

4. We have heard both the parties and perused the records. On page no.413 of the paper book filed by the assessee, the assessee has enclosed copy of notice under section 274 r.w.s 271(1)(c) of the Act dated 26.12.2016. It is observed from the record that the AO has not struck off the relevant words i.e. “*have concealed the particulars of your income/furnished inaccurate particulars of such income.*”

5. We have also gone through the assessment order dated 26.12.2016 passed under section 143(3) r.w.s 144C(13) & 254 of the Income Tax Act, 1961. In the assessment order also AO has merely mentioned penalty proceedings under section 271(1)(c) are initiated separately. Thus, even in the assessment order, the AO has not specified whether the penalty has been initiated for the concealment of income or filing inaccurate particulars of income.

6. The only issue is levy of Penalty of Rs.38,37,270/- u/s.271(1)(c) of the Act. On perusal of the notice u/s 271(1)(c) dated 26.12.2016 issued by the Assessing Officer (AO), it is observed that the AO has not struck the appropriate words i.e. Concealed the particulars of Income or furnished Inaccurate particulars. In the assessment order there is no mention whether the penalty has been initiated for filling inaccurate particulars of Income or for concealment of Income.

6.1 The Hon'ble Bombay High Court has held in the case of **Ganga Iron & Steel Trading Co. v/s Commissioner of Income Tax. [2022] 135 taxmann.com 244 (Bombay) order dated December 22, 2021** as under :

Quote, "10. We find that the law as laid down by the Full Bench applies on all fours to the facts of the present case as in the show cause notice dated 12-2-2008, the Assistant Commissioner of Income-tax is not clear as to whether there was concealment of particulars of income or that the Assessee had furnished inaccurate particulars of income. We therefore find that issuance of such show

cause notice without specifying as to whether the Assessee had concealed particulars of his income or had furnished inaccurate particulars of the same has resulted in vitiating the show cause notice.

Heavy reliance was placed by the learned counsel for the Revenue on the decision in Mak Data (P.) Ltd. (supra) to urge that the penalty contemplated by section 271 (1) (c) of the said Act was in the nature of civil liability and mens rea was not essential therein. The decision in Dilip N. Shroff (supra) having been held as not laying down good law in Dharmendra Textile Processors Ltd. (supra), it was submitted that the show cause notice issued in the present proceedings was liable to be upheld. It may be noted that all the decisions relied upon by the learned counsel for the Revenue were considered by the Full Bench while answering the issues referred to it on reference. The Full Bench having considered these decisions and having answered the question as regards defect in the notice under section 271(1)(c) of the said Act resulting in vitiating the penalty proceedings, we find ourselves bound by the answers given by the Full Bench. It would not be permissible for us to disregard this aspect and take a different view of the matter.

Accordingly substantial question of law no. III is answered by holding that since the show cause notice dated 12-2-2008 does not indicate whether there was concealment of particulars of income or furnishing of incorrect particulars of such income, the same would vitiate the penalty proceedings. ” Unquote.

6.2 In the case under consideration the AO has not struck the appropriate in applicable words in the penalty notice. Also as mentioned in earlier para, in the assessment order the AO has not mentioned whether the penalty is initiated for concealment or filling inaccurate particulars. This issue goes to the root of initiation of penalty. Therefore, respectfully following the Hon'ble jurisdictional High Court, it is held that the penalty u/s.271(1)(c) is not maintainable. Hence, the Assessing Officer is directed to delete the penalty u/s.271(1)(c). Accordingly, appeal of the Assessee is allowed.

7. In the result, appeal of the Assessee is Allowed.

Order pronounced in the open Court on 4th November, 2022.

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

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

पुणे / Pune; दिनांक / Dated : 4th Nov, 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
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.