

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE – VIRTUAL COURT

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

ITA No.1547/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

ACIT, Aurangabad.	Circle-3,	Vs.	Shri Vithalrao Ranganthrao Ambarwadikar Plot No.196, Samarth Nagar, Aurangabad PAN : AELPA0579F
Appellant			Respondent

Assessee by
Revenue by

Shri M.K. Kulkarni
Shri Deepak Garg

Date of hearing 26-04-2021
Date of pronouncement 26-04-2021

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the Revenue is directed against the order passed by the CIT(A)-2, Aurangabad on 13-04-2017 deleting penalty of Rs.2,26,23,440 imposed by the Assessing Officer under section 271(1)(c) of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2013-14.

2. Briefly stated, the facts of the case are that the assessee is an individual engaged in the business of petrol pump. A return was filed declaring certain income. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee earned remuneration of Rs.4 lakh from a firm, M/s. Ambarwadikar and Co., which was credited to the capital but not offered for taxation. On being called upon to explain the reasons for such non-disclosure of income in the return, the assessee offered the said amount for taxation. In the same manner, the assessee earned capital gain of Rs.9,92,38,664 on the transfer of certain lands to the Deogiri Nagari Sahakari Bank Ltd., but did not offer any capital gain in the return of income. When the assessee's attention was drawn to this fact, he again agreed for the addition. Thus, the AO made additions, *inter alia*, for the above amounts on the basis of admission by the assessee. Subsequently, penalty was imposed u/s 271(1)(c) of the Act after issuing notice u/s 274 of the Act. The ld. CIT(A) observed that the notice issued by the AO u/s 274 contained both the limbs viz., concealment of income and furnishing of inaccurate particulars of income and none of the two was struck off, as against the penalty order having been passed only for concealment of income. Relying on certain decisions, he

deleted the penalty of Rs.2.26 crore imposed by the AO, against which, the Revenue has approached the Tribunal.

3. We have heard the rival submissions through Virtual Court and scanned through the relevant material on record. A copy of the notice issued u/s 274 of the Act has been placed in the appeal folder, from which it is discernible that the AO did not strike off either of the two limbs viz., concealment of the particulars of income; and furnishing of inaccurate particulars. However, the penalty order came to be passed by holding that the assessee concealed his income. Recently, a full Bench of Hon'ble Bombay High Court in *Mohd. Farhan A. Shaikh Vs. Dy.CIT (2021) 125 taxmann.com 253 (Bom)* considered this very issue. Answering the question in affirmative, the Full Bench held that a defect in notice of not striking the relevant 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. SLP of the Department against this judgment has been recently dismissed by

the Hon'ble Supreme Court in *Pr.CIT Vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxmann.com 249 (SC)*. In view of the overwhelming 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, but the penalty has been, in fact, levied for one of the two, such a penalty order gets vitiated.

4. Turning to the facts of extant case, we find from the notice u/s 274 that the AO did not strike out one of the two limbs though the penalty was imposed with reference to the first one only, namely, concealment of particulars of income. In such a panorama, the penalty order is bad in law. We, therefore, countenance the view taken by the Ld. CIT(A) in deleting the penalty.

5. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 26th April, 2021.

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

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

पुणे Pune; दिनांक Dated : 26th April, 2021
GCVSR

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

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

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	26-04-2021	Sr.PS
2.	Draft placed before author	26-04-2021	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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