

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.588/PUN/2017

निर्धारण वर्ष / Assessment Year : 2011-12

Vijay Mohan Harde, A/P.Deolali, Tal. Pravra, Dist. Rahuri PAN : ABEPH4172K	Vs.	ACIT, Ahmednagar
Appellant		Respondent

Assessee by Shri S.N. Puranik
Revenue by Shri S.P. Walimbe

Date of hearing 13-05-2021
Date of pronouncement 17-05-2021

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee arises out of the order dated 04-11-2016 passed by the CIT(A)-2, Pune confirming the penalty of Rs.31,42,000/- imposed by the Assessing Officer (AO) under section 271(1)(c) of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2011-12.

2. Briefly stated, the facts of the case are that the assessee has been the proprietor of M/s. Food Land Agro (India) engaged in the business of processing and sale of milk. The return of income was filed declaring total income of Rs.15,11,719/-. During the course of assessment proceedings, the AO observed that the assessee had

entered into an agreement with M/s. Prabhat Diary Pvt. Ltd. for transferring all the assets and liabilities of its business for a total consideration of Rs.1,36,06,044/-. The AO observed that the assessee has transferred the entire proprietary concern to M/s. Prabhat Diary Pvt. Ltd. and did not disclose the capital gains arising therefrom. Thus, invoking section 50B of the Act, he made an addition of Rs.91,43,141/-. Subsequently, a penalty of Rs.31,42,000/- was imposed on this score by the AO u/s.271(1)(c) after issuing notice u/s 274 of the Act. The ld. CIT(A), after elaborately discussing the issue, upheld the penalty. Aggrieved thereby, the assessee has come up in appeal before 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., concealed the particulars of income or furnished inaccurate particulars of such income, albeit it was a case of furnishing of inaccurate particulars of income. The penalty order also came to be passed by holding in para 6.5 that: `the amount added or disallowed in computing the total income of the assessee as a result thereof shall, for the purposes of clause (c) of this sub-

section (1) of section 271, be deemed to represent the *income in respect of which particulars have been concealed or inaccurate particulars have been furnished.*' Recently, the full Bench of Hon'ble Bombay High Court in *Mohd. Farhan A. Shaikh Vs. Dy.CIT (2021) 125 taxmann.com 253 (Bom)* has 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. The SLP of the Department against this judgment has recently been 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 of the Act that the AO did not strike out one of the two limbs. Not only that, the penalty was also imposed in the same way by referring to both the limbs in the penalty order. As against that, the penalty was leviable only on one limb, namely, furnishing of inaccurate particulars of income. In such a situation, the penalty order gets vitiated. Respectfully following the Full Bench judgment of the Hon'ble jurisdictional High Court, we overturn the impugned order and direct to delete the penalty.

5. In the result, the appeal is allowed.

Order pronounced in the Open Court on 17th May, 2021.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 17th May, 2021
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Pune
4. The PCIT-2, Pune
5. DR, ITAT, 'A' Bench, 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	13-05-2021	Sr.PS
2.	Draft placed before author	13-05-2021	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.		

*