

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

INCOME TAX APPEAL NO.1742 OF 2011

Shri. Omprakash T. Mehta
8-A Mehta Estate, Kurla, Andheri Road,
Sakinaka, Mumbai - 400 072.
PAN : AADPM0852H

.. Appellant

Versus

Income Tax Officer 21 (3) (4)
Room No.505, C-11, 5th Floor,
Pratyaksha Kar Bhavan, Bandra Kurla
Complex, Mumbai - 400 051.

.. Respondent

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- Mr. Nishant Thakkar a/w. Ms. Jasmin Amalsadvala and Ms.Pooja K i/b. Nahush Shah Legal, Advocate for Appellant.
 - Mr.A.R.Malhotra a/w. Mr. N.A. Kazi, Advocate for Respondent.
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**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.**

**RESERVED ON : 05th March, 2020.
PRONOUNCED ON : 17th August, 2020.**

JUDGMENT (PER MILIND N. JADHAV, J.) :

1. Heard Mr. Nishant Thakkar, learned counsel for the appellant and Mr. A.R. Malhotra, learned standing counsel, Revenue for the respondent.

2. This appeal has been preferred by the appellant (also referred to as the assessee) under the provisions of Section 260-A of the Income Tax Act, 1961 (briefly 'the Act' hereinafter) against the order dated 31.05.2010 passed by the Income Tax Appellate

Tribunal at Mumbai ('Tribunal' for short) for the Assessment Year 2005-06.

3. The appeal has been preferred by the assessee projecting the following question as substantial question of law :

“Whether the Tribunal was right in law in confirming the levy of penalty under Section 271(1)(c) of the Act ?”

4. For appreciation of the question proposed, it would be apposite to deal with the relevant facts :-

(i) Appellant is an assessee under the Act. Appellant alongwith 4 others executed an agreement for sale dated 07.12.2004 in respect of a plot of land at Vasai. The total consideration stated in the agreement was Rs.2,60,00,000.00 and conveyance was to be executed only upon receipt of the entire consideration. The appellant's share in the sale consideration of the said plot of land was 49.2%. During the financial year under consideration, a sum of Rs.1,05,01,111.00 was received out of the total consideration of Rs.2,60,00,000.00. Hence during the said financial year conveyance was not executed and possession was not handed over of the said plot.

(ii) In the return of income filed by the appellant for the Assessment Year 2005-06, appellant offered to tax his share in the consideration received during the previous year i.e. Rs.51,66,548.00.

(iii) Respondent by notice dated 18.04.2007, called upon the appellant to furnish details of capital gains earned during the year under consideration i.e. Assessment Year 2005-06. Appellant furnished the requisite information alongwith a copy of the sale agreement to the respondent and after scrutinizing the same respondent accepted the capital gains arising on execution of the sale agreement as offered by appellant. Accordingly, assessment order was passed.

(iv) During the Assessment Year 2006-07, a further consideration of Rs.1,30,00,000.00 was received out of the balance remaining total consideration. Appellant filed return of income for the Assessment Year 2006-07 and offered to tax his share out of Rs.1,30,00,000.00 received during the year, viz; Rs.63,96,000.00.

(v) During the financial year relevant to Assessment Year 2007-08 another installment of Rs.15,00,000.00 out of the balance was received and appellant offered his share in the said amount (i.e. Rs.7,38,000.00) to tax in the return of income filed for the Assessment Year 2007-08.

(vi) The final outstanding balance amount of consideration i.e. Rs.9,98,889.00 (Rs.2,60,00,000- Rs.2,50,01,111) was not

received and therefore conveyance was not executed between the parties. However, during Assessment Year 2006-07 physical possession of the said plot of land was forcibly taken over by the purchaser.

(vii) Respondent raised an objection with the manner in which capital gains arising from the sale agreement with respect to the said plot was offered to tax by the appellant on receipt basis. After following the procedure, respondent issued notice dated 21.04.2008 under the provisions of Section 148 of the Act seeking to reopen the assessment for the Assessment Year 2005-06 under Section 147 of the Act.

(viii) Appellant by letter dated 02.06.2008 requested the respondent to treat the original return filed by the appellant as the return in compliance to the notice under Section 148 of the Act. By a further letter dated 09.08.2008, appellant called upon the respondent to furnish reasons for issuing the statutory notice under Section 148 of the Act.

(ix) However, appellant revised his income tax returns for the Assessment Years 2005-06 to 2007-08 withdrawing the amount of capital gains and offering to tax capital gains on the entire sale consideration of Rs.2,60,00,000.00 for the financial year relevant to Assessment Year 2006-07. Thus, the appellant

filed revised returns of income for the Assessment Years 2005-06, 2006-07 and 2007-08 on the above basis respectively.

(x) Respondent by letter dated 03.11.2008 informed the appellant that the revised returns would not be accepted in view of the appellant's letter dated 02.06.2008 by which the appellant had requested the respondent to consider the original return as the return in compliance to the notice under Section 148 of the Act.

(xi) Appellant thereafter submitted a revised working of capital gains for the Assessment Years 2005-06 and 2006-07 and requested the respondent to complete the assessment for the 3 years, viz; Assessment Years 2005-06, 2006-07 and 2007-08.

(xii) Respondent completed the reassessment for the Assessment Year 2005-06 on 26.11.2008 and taxed the appellant's share of capital gains arising on the entire sale consideration of Rs.2,60,00,000.00 for the said Assessment Year 2005-06. However, while completing the above assessment respondent also initiated penalty proceedings against the appellant for furnishing inaccurate particulars of income as a result of deferring the charge on capital gains arising pursuant to execution of the sale agreement with respect to the said plot of land.

(xiii) The assessments for the Assessment Years 2006-07 and 2007-08 were completed keeping in mind the reassessment completed for the Assessment Year 2005-06.

(xiv) After completing the above reassessment for the Assessment Year 2005-06, respondent issued notice dated 26.11.2008 under Section 271(1)(c) of Act calling upon the appellant to show cause as to why penalty should not be levied and called upon the appellant to attend the hearing for penalty proceedings by another notice dated 02.04.2009.

(xv) By letter dated 13.04.2009, appellant furnished detailed reasons and circumstances under which the revised returns of income for the Assessment Years 2005-06 to 2007-08 came to be filed and also the details of taxes alongwith amounts that were due as a result of the revised returns which had promptly been paid by the appellant without raising any dispute. By another letter dated 13.04.2009 appellant also brought to the notice of the respondent that during the course of the original assessment proceedings for the Assessment Year 2005-06, appellant had furnished a copy of the sale agreement and the same had been enquired into by the respondent viz-a-viz capital gains offered to tax by the appellant.

(xvi) By order dated 28.05.2009 respondent levied penalty on the appellant for furnishing inaccurate particulars of income as

a result of the default committed by the appellant in not offering the capital gains arising out of the entire sale consideration in the financial year relevant to the Assessment Year 2005-06.

(xvii) Being aggrieved by the above order passed by the respondent levying penalty, appellant preferred statutory appeal before the Commissioner of Income Tax (Appeals) (hereinafter referred to as "CIT Appeals"). The CIT Appeals by order dated 27.11.2009 confirmed the levy of penalty by the respondent.

(xviii) Thereafter, appellant preferred further appeal before the Tribunal. Tribunal by order dated 31.05.2010 dismissed the appellant's appeal and confirmed the order of CIT Appeals.

(xix) Appellant filed an application under Section 254 of the Act seeking rectification of the order dated 31.05.2010. Tribunal however, considered the above application to be in the nature of a review petition and dismissed the same by order dated 27.08.2010.

(xx) Hence this appeal by the assessee / appellant.

5. Mr. Nishant Thakkar, learned counsel appearing for the appellant at the outset has submitted a brief chronology of the dates and events and taken us through the same, which is reproduced herein :-

Sr. No.	Date	Particulars	Exh.	Pg. Nos.
1	07-12-2004	Agreement to sell land in Vasai for Rs.2.6 crores- Appellant's share in land = 49.2%. Appellant receives only Rs.51.66 Lakhs during F.Y. 2004-05.	A	19-27
2	31-10-2005	Return for A.Y. 2005-06 offering Rs.51,66,548/- and claiming exemption u/s. 54EC of the Act.	B	28-30
3	31-03-2005	Assessment Order for A.Y. 2005-06 accepting Assessee's claim	D	33-35
4	28-10-2006	Return for A.Y. 2006-07 filed offering Rs.63,96,000/- as capital gains on Vasai Land being amount received during the year.	E	36-42
5	16-11-2007	Return for A.Y. 2007-08 filed offering Rs.7,38,000/- as capital gains on Vasai land being amount received during the year.	F	43-45
6	21-04-2008	148 Notice issued by Respondents for A.Y. 2005-06 to bring to tax the entire gains in A.Y. 2005-06		
7	20-08-2008	Revised return filed for A.Y. 2006-07 - withdrawing offer of capital gains in view of offer of entire gains to be made in A.Y. 2005-06 - revision not accepted in view of reopening of A.Y. 2005-06	I	50-56
8	21-08-2008	Revised return filed for A.Y. 2005-06 offering the entire gains to tax - not accepted since the return was barred by limitation	J	57-63
9	22-08-2008	Revised return filed for A.Y. 2007-08 - withdrawing offer of capital gains in view of offer of entire gains to be made in A.Y. 2005-06 - revision not accepted in view of reopening of A.Y. 2005-06.	K	64-66
10	22-08-2008	Letter to Respondent to consider revised return	L	67-68
11	03-11-2008	Reasons for Re-opening	M	69-70
12	26-11-2008	Revised working of capital gains submitted (Investment in NABARD) A.Y.2005-06	N	71-74
13	20-10-2008	Revised working of capital gains submitted (Investment in NABARD) A.Y.2006-07	O	75-80
14	26-11-2008	Re-assessment Order Passed for A.Y. 2005-06	P	81-86
15	19-12-2008	Re-assessment Order Passed for A.Y. 2006-07	Q	87-89
16	26-11-2008	SCN as to why penalty should not be issued	R	90
17	02-04-2009	Second Show Cause Notice	S	92
18	13-04-2009	Assessee's Response to SCN	T	93-94
19	24-04-2009	Second Letter by Assessee	U	95-96
20	28-05-2009	Penalty Order for A.Y. 2005-06	V	97-99
21	13-06-2009	Form 35 a/w SOF AND GOA - CIT Appeal Filed against Penalty Order	W	100-106

22	27-11-2009	CIT (Appeals) Order	X	107-111
23	04-01-2010	Form 36 – GOA ITAT Appeal Filed	Y	112-114
24	31-05-2010	ITAT Order	Z	136-146
25		MA Filed challenging the Tribunal's Order		
26	27-08-2010	MA Order	AA	147-159

5.1 From the above chronology of events, Mr. Thakkar has submitted before us that there was a complete disclosure made by appellant at all times and, therefore, it was not a case of the appellant furnishing inaccurate particulars of income or of concealing particulars of income. He submitted computation of income of all three years viz. Assessment Years 2005-06, 2006-07 and 2007-08 wherein it was specifically disclosed that the consideration offered to tax was on receipt basis and most importantly during the first Assessment Year i.e. 2005-06 scrutiny proceedings, appellant had furnished copy of the agreement for sale which was considered and accepted by the respondent. Appellant had filed income tax returns for the respective Assessment Years i.e. 2005-06 (filed on 31.10.2005), Assessment Year 2006-07 (filed on 28.10.2006) and Assessment Year 2007-08 (filed on 01.11.2007), well before the reassessment notice under Section 148 of the Act came to be issued on 21.04.2008. Hence there was complete disclosure. He submitted that even though after receipt of the reassessment notice if the appellant had accepted assessability of capital gains in Assessment Year 2005-06, it did not imply or mean that the appellant had furnished inaccurate particulars of income or the appellant had concealed

particulars of income. The copy of agreement for sale dated 07.12.2004 was disclosed by the appellant at the time of scrutiny at the first instance i.e. in the Assessment Year 2005-06. The agreement was an unregistered document on a stamp paper worth Rs.100.00. As per Clause 8 of the agreement, conveyance was required to be executed only upon receipt of the entire consideration which had not been fulfilled. Under Clause 14 of the agreement possession was required to be handed over only upon execution of conveyance. Again under Clause 12 of the agreement, appellant had given permission to the purchaser to fence the property as a mere licensee. On the basis of the aforesaid submissions he concluded that the agreement to sale did not constitute a "sale" under Section 2(47)(i) of the Act and, therefore, the land could not be deemed to be transferred under the Act. While levying the penalty, respondent was completely silent on the aforesaid aspect and provisions of Section 2(47) of the Act. Possession and license given to the purchaser to enter upon the property could not be deemed to be construed as part possession given under Section 53A of the Transfer of Property Act, 1881. He submitted that neither in the assessment order nor in the penalty order, respondent dealt with the case of the appellant that since there was no transfer under the Act and that the appellant being under a bonafide belief had therefore not offered the entire gains in Assessment Year 2005-06. In the assessment order for the Assessment Year 2005-06, respondent

had accepted the case of the appellant on the disclosure of the agreement for sale. There was no loss incurred to the revenue at any point of time or that the appellant was guilty of suppression, concealment of particulars or furnishing inaccurate particulars of income as alleged by the respondent. Section 271(1)(c) contemplates two separate offences viz. furnishing of inaccurate particulars of income and concealment of particulars of income. In the present case, penalty proceedings were initiated against the appellant for furnishing of inaccurate particulars of income. Further, relevant provisions of the statutory notice issued under the provisions of Section 274 of the Act was “blank” i.e. not filled up or struck off. In the present case, initiation of penalty proceedings was done for one offence i.e. (for furnishing inaccurate particulars of income) but levy of penalty was for another offence i.e. (concealment of income) which is not permissible in law. Keeping the relevant portions of the notice issued under Section 274 of the Act blank led to a jurisdictional defect and showed complete non-application of mind on the part of the respondent- Assessing Officer. Orders passed by the ITAT and CIT Appeals upholding the order levying penalty passed by the respondent under the provisions of Section 271(1)(c) of the said Act therefore deserves to be quashed.

5.2. Mr. Thakkar laid emphasis and relied on the following judgments in support of his submissions :-

A. *‘Agreement to sell’ does not constitute a sale u/s. 2(47)(i) of the*

Income Tax Act, 1961 ("the Act") and therefore is not a transfer u/s 2(47) of the Act - Alpati Venkataramiah v/s. CIT - 57 ITR 185 (SC).

B. Permission /license to enter is not possession under S. 53A of the Transfer of Property Act and hence does not constitute transfer u/s 2(47)(v) of the Act- Sheshasayee Steel P. Ltd. v/s. ACIT - 421 ITR 46 (SC).

C. Unregistered agreement to sell on Rs.100 stamp paper does not result in a transfer u/s. 2(47)(v) of the Act - CIT v/s. Balbir Singh maini 398 ITR 531 (SC).

D. Agreement specifically provides for conveyance and possession only on full payment, pending conveyance all permissions etc. in the name of Vendors - hence no de facto transfer for the purposes of 2(47) (vi) of the Act - Sheshasayee Steel p. Ltd. Vs. ACIT - 421 ITR 46(SC).

E. When dispute between assessee and revenue is year of tax ability, penalty u/s 271(1)(c) should not be levied:

- (i) CIT Vs. Otis Elevator Co. Ltd. - ITXA No. 758 OF 2014*
- (ii) D M Dhanukar vs CIT - 65 ITR 280 (Bom)*
- (iii) CIT vs Sri Shraddha Textile Processors - 286 ITR 499*

(Mad)

- (iv) BTX Chemicals vs CIT - 288 ITR 196 (Guj)*
- (v) CIT vs Jagjit Engineering Works P.Ltd.-275 ITR 239(P&H)*

F. Initiation of penalty for one offence and levy for another offence is not permissible - CIT vs Samson Perincherry [392 ITR 4] (Bom)

G. This defect is compounded when the notice u/s 274 is blank, as it shows complete non-application of mind - a jurisdictional

defect :

- i. PCIT Vs. Goa Coastal Resorts & Recreation Pvt. Ltd. - ITXA 24 of 2019*
- ii. Rishi R. Oswal Vs. CIT - ITXA 1293 of 2015*
- iii. Ashish Estates & Properties P. Ltd. Vs. CIT - 257 Taxman 585 (Bom)*

6. Per contra, Shri A.R.Malhotra, learned standing counsel, Revenue appearing on behalf of the respondent defended both the orders passed by the CIT Appeals and ITAT in upholding the levy of penalty by the respondent- Assessing Officer on the appellant. He submitted that there was deliberate attempt on the part of the assessee to submit inaccurate particulars of income so as to reduce the appellant's taxable income. He laid emphasis on the explanation appended to Section 271(1)(c) and submitted that the said explanation imposes the element of strict liability on the assessee for furnishing inaccurate particulars of income while filing return. Shri Malhotra referred to and relied upon the following judgments in support of his submissions.

A	Samson Maritime Ltd. Vs. Commissioner of Income Tax City 7	Bombay High Court
B	Dr. Amin's Pathology Laboratory Vs. P.N.Prasad, Joint Commissioner of Income Tax	(2001) 252 ITR 673 (Bombay)
C	Union of India Vs. Dharamendra Textile Processors	(2008) 174 Taxman 571 (SC)

7. The submissions made by learned counsel for the parties have been duly considered. Also perused the materials on

record including the judgments cited at the bar.

8. Before we advert to the submissions made, it would be apposite to state the relevant legal provisions which are required to be considered in the facts and circumstances of the present case :

Section 2(47) of the Income Tax Act, 1961:

2. In this Act, unless the context otherwise requires,-

(47) "transfer", in relation to a capital asset, includes,-

(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 1 (4 of 1882); or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation 1.- For the purposes of sub- clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA;

Explanation 2. - For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India;)

"[Section 53A](#) of the Transfer of Property Act, 1882:

53A. Part performance.— Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

In order that the provisions of [Section 53A](#) of the T.P. Act be attracted, first and foremost, the transferee must, in part performance of the contract, have taken possession of the property or any part thereof. Secondly, the transferee must have performed or be willing to perform his part of the agreement. It is only if these two important conditions, among others, are satisfied that the provisions of [Section 53A](#) can be said to be attracted on the facts of a given case.

Section 271(1)(c) is as under :

"271(1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person-

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty, -

(i).....

(ii).....

(iii) in the cases referred to in clause (c) or clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits."

9. Since imposition of penalty is under Section 271 (1) (c) of the Act, as per this provision, if the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under the Act is satisfied that any person had concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty, in addition to the tax payable by him, a sum which shall not be less than but which shall not exceed three times the amount of tax sought to be evaded by reason of concealment of particulars of his income or furnishing of inaccurate particulars of such income.

10. The two key expressions in Section 271(1)(c) of the Act are "concealment of particulars of his income" and "furnishing inaccurate particulars of such income". These two expressions comprise of the two limbs for imposition of penalty under Section 271(1)(c) of the Act. Gujarat High Court in the case of *Manu Engineering Vs. CIT, 122 ITR 306* and Delhi High Court in *Virgo Marketing P. Ltd. Vs. CIT, 171 Taxmann 156* held that levy of

penalty has to be clear as to the limb for which the penalty is levied. If the Assessing Officer proposes to invoke the first limb, then the notice has to be appropriately marked. Similarly, if the Assessing Officer wants to invoke the second limb then the notice has also to be appropriately marked. If there is no striking off of the inapplicable portion in the notice which is in printed format, it would lead to an inference as to non - application of mind. In such a case, penalty would not be sustainable.

11. Supreme Court in the case of *Ashok Pai Vs. CIT*, 292 *ITR 11* observed that concealment of income and furnishing of inaccurate particulars of income in Section 271(1)(c) of the Act carry different connotations.

12. Let us now advert to the substantial question of law proposed by the appellant. Through this question, appellant is contending that the Tribunal ought to have held that the order of penalty passed under Section 271(1) (c) of the Act was bad in law in view of the fact that at the time of initiation of penalty proceedings as well as at the time of imposition of penalty, Assessing Officer was not clear as to which limb of Section 271 (1) (c) of the Act was attracted. At the time of hearing, learned counsel for the appellant argued that in the show-cause notice the inapplicable portion was not struck off; thus it was not indicated in the notice whether the penalty was sought to be imposed for

concealment of particulars of income or for furnishing inaccurate particulars of income, which has vitiated the impugned order of penalty. We have already noted and analyzed the two limbs of Section 271(1)(c) of the Act and also the fact that the two limbs i.e. concealment of particulars of income and furnishing inaccurate particulars of income carry different connotations. We have also noticed that the Assessing Officer has to indicate in the statutory notice for which of the two limbs he proposes to impose the penalty and for this the notice has to be appropriately marked. If in the printed format of the notice the inapplicable portion is not struck off thus not indicating for which limb the penalty is proposed to be imposed, it would lead to an inference as to non-application of mind, thus vitiating imposition of penalty.

13. In *Goa Coastal Resorts & Recreation Pvt. Ltd. (supra)* both the lower appellate authorities had categorically held that there was no record of satisfaction of the Assessing Officer that there was any concealment of income or that any inaccurate particulars were furnished by the assessee. In such circumstances, this Court held that the two lower appellate authorities had correctly ordered dropping of penalty proceedings against the assessee. It was in that context that this Court noted that in the notice issued in printed format the inapplicable portion was not struck off. Therefore in that case, this Court found that in addition to the notice being defective, there was no finding or

satisfaction recorded in relation to concealment or furnishing of inaccurate particulars of income.

14. This Court in a recent judgment passed in the case of Ventura Textiles Ltd. vs. Commissioner of Income Tax – Mumbai City – 11 in Income Tax Appeal No.958 of 2017 dated 12.06.2020 was concerned with a similar question with respect to issuance of the statutory show-cause notice under Section 274 read with Section 271 of the Act proposing to impose penalty. While dealing with the basic question of validity of the notice, this Court in paragraph Nos.23 to 25 held as under :-

“23. The statutory show-cause notice under Section 274 read with Section 271 of the Act proposing to impose penalty was issued on the same day when the assessment order was passed i.e., on 28.02.2006. The said notice was in printed form. Though at the bottom of the notice it was mentioned 'delete inappropriate words and paragraphs', unfortunately, the Assessing Officer omitted to strike off the inapplicable portion in the notice i.e., whether the penalty was sought to be imposed for concealment of particulars of income or for furnishing inaccurate particulars of such income. Such omission certainly reflects a mechanical approach and non-application of mind on the part of the Assessing Officer.

24. However, the moot question is whether the assessee had notice as to why penalty was sought to be imposed on it?

25. This brings us to the basic question as to what is a notice or what do we mean by notice. Concise Oxford English Dictionary, Indian Edition, explains notice to

mean the fact of observing or paying attention to something; advanced notification or warning; a displayed sheet or placard giving news or information. It means to become aware of. In other words, to put someone on notice would mean warn someone of something about or likely to occur. Black's Law Dictionary, Eighth Edition, defines the expression 'notice' to mean having actual knowledge of a fact; has received information about it; has reason to know it; knows about the related fact. In CST Vs. Subhash & Company, (2003) 3 SCC 454 , Supreme Court deliberated upon the concept of notice and observed that the term 'notice' has originated from the Latin word "notifia" which means "being known" or "a knowing". Thereafter, Supreme Court referred to the definition of the word 'notice' in various general and judicial dictionaries. Without adverting to the large number of definitions, suffice it to say notice would mean information, warning or announcement of something impending; notice in its legal sense may be defined as information concerning a fact communicated to a party by an authorized person or actually derived by him from a proper source; the term "notice" in its full legal sense embraces a knowledge of circumstances that ought to induce suspicion or belief as well as direct information of that fact."

15. In the present case, concealment of particulars of income was not the charge against the appellant, the charge being furnishing of inaccurate particulars of income. As discussed above, it is trite that penalty cannot be imposed for alleged breach of one limb of Section 271(1)(c) of the Act while penalty proceedings were initiated for breach of the other limb of Section 271(1)(c). This has certainly vitiated the order of penalty.

16. On the ground that while the charge against the assessee was of furnishing inaccurate particulars of income whereas the penalty was imposed additionally for concealment of income, the order of penalty as upheld by the lower appellate authorities could be justifiably interfered with, still we would like to examine whether there was furnishing of inaccurate particulars of income by the assessee in the first place because that was the core charge against the assessee.

17. In ***CIT Vs Reliance Petroproducts Pvt. Ltd., 322 ITR 158 (SC)***, Supreme Court examined the meaning of the words 'particulars' and 'inaccurate'. As per Law Lexicon, the word 'particulars' means 'detail or details; the details of a claim or the separate items of an account'. Therefore, it was held that the word 'particulars' used in Section 271(1)(c) of the Act would embrace the meaning of the details of the claim made. Referring to Webster's Dictionary where the word 'inaccurate' has been defined as 'not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript', Supreme Court held that the two words i.e., 'inaccurate' and 'particulars' read in conjunction must mean that the details supplied in the return are not accurate, not exact or correct, not according to truth or erroneous. It was held that mere making of a claim which is not sustainable in law by itself would not amount to

furnishing inaccurate particulars regarding the income of the assessee. Therefore, such claim made in the return cannot amount to furnishing inaccurate particulars of income. Elaborating further, Supreme Court held that if such stand of the Revenue was accepted then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c) of the Act which is clearly not the intendment of the Legislature.

18. This decision was followed by this Court in *CIT Vs. M/s. Mansukh Dyeing & Printing Mills, Income Tax Appeal No.1133 of 2008*, decided on 24.06.2013. In *CIT Vs. DCM Ltd., 359 ITR 101*, Delhi High Court applied the said decision of the Supreme Court and further observed that law does not debar an assessee from making a claim which he believes is plausible and when he knows that it is going to be examined by the Assessing Officer. In such a case a liberal view is required to be taken as necessarily the claim is bound to be carefully scrutinized both on facts and in law. Threat of penalty cannot become a gag and / or haunt an assessee for making a claim which may be erroneous or wrong. Again, in *CIT Vs. Shahabad Co-operative Sugar Mills Ltd., 322 ITR 73*, Punjab & Haryana High Court held that making of wrong claim is not at par with concealment or giving of inaccurate information which may call for levy of penalty under Section 271(1)(c) of the Act.

19. Reverting back to the present case it is quite evident that assessee had declared the full facts and the sale agreement at the first instance; the full factual matrix or facts were before the Assessing Officer while passing the assessment order. It is clear from the facts that the appellant had never suppressed any material fact from the respondent. Hence we are inclined to accept the submissions of the appellant. It is another matter that the claim based on such facts was found to be inadmissible. This is not the same thing as furnishing inaccurate particulars of income as contemplated under Section 271(1) (c) of the Act.

20. Thus, on a careful examination of the entire matter, we answer the substantial question of law in favour of the appellant / assessee. Therefore, on an overall consideration, the appeal would stand allowed and the order of penalty as affirmed by the two lower appellate authorities would consequently stand interfered with.

21. Accordingly, the appeal is allowed. However, there shall be no order as to costs.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)

Ravindra
M.
Amberkar

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