

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.1474/Mum/2023

(निर्धारण वर्ष / Assessment Years: 2011-12)

DCIT, Central Circle-3 Room No. 11, A-Wing, 6 th Floor, Ashar I. T. Park, Road No. 16-Z Wagle Industrial Estate, Thane (W)-400604.	बनाम / Vs.	Sai Sugam Enterprises D- II-01/02 Aakansha Commercial Comp., Nallasopara (West), 401209.
स्थायी लेखा सं. /जीआइआर सं. /PAN/GIR No. : ABVFS4193G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Subodh Ratnaparkhi
Revenue by:	Dr. Kishore Dhule (DR)

सुनवाई की तारीख / Date of Hearing: 13/07/2023

घोषणा की तारीख /Date of Pronouncement: 27/07/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-11, Pune dated 10.02.2023 for the assessment year 2011-12.

2. At the outset, the Ld. AR of the assessee Shri Subodh Ratnaparkhi pointed out that the AO had levied an amount of Rs.71,78,070/- u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter "the Act") by penalty order dated 14.02.2017 for AY. 2011-12. According to him, on appeal, the Ld. CIT(A) has taken note of the fact that in the notice issued by AO before levy of penalty, the AO failed to strike out the faults/charges which are not applicable to assessee. Meaning, AO in the penalty notice didn't specify the fault/charge against which assessee is being proceeded against for levy of penalty; and so, assessee was in the dark as to what was the fault charged against



ITA No.1474/Mum/2023
A.Y. 2011-12
M/s. Sai Sugam Enterprises

it for levy of penalty and therefore, the notice itself being invalid the levy of penalty was held to bad and deleted. And the Ld AR, drew our attention to the penalty notice issued u/s 274 r.w.s. 271(1)(c) of the Act dated 06.09.2016 which was held by Ld CIT(A) to be defective/invalid. This action of Ld. CIT(A) has been challenged by the Department before us.

3. We note that Ld CIT(A) found the penalty notice issued by AO was prepared in the standard profoma which contents show that both faults/charge have been spelled out i.e. *have concealed the particulars of income and/or furnished inaccurate particulars of such income*. But Ld CIT(A) found that AO failed to specify which charge/fault assessee is being alleged for levy of penalty by striking down any one of the two (2) limbs stated therein. According to Ld. CIT(A) by not striking down one of fault/charge, the assessee was not able to defend properly the charge/fault against which the AO was proposing to levy penalty. Therefore, according to Ld CIT(A) the penalty levied by AO is vitiated and ordered deletion of penalty. And for taking such a view, the Ld. CIT(A) has relied on the Full Bench decision of the Hon'ble Jurisdictional High Court in the case of Mohd. Farhan A. Shaikh Vs. DCIT (2021) 434 ITR 1 (Bombay) dated 11.03.2021 wherein it was held that the show cause notice issued prior to levy of penalty without specifying the fault/charge against which the assessee is being proceeded, would vitiate the penalty itself. And thus the Hon'ble High Court upheld the view of the division bench order in the case of PCIT Vs. Goa Dourado Promotions (P.) Ltd. (Tax Appeal No.18 of 2019, dated 26.11.2019) and also held that the contrary view taken by an



ITA No.1474/Mum/2023
A.Y. 2011-12
M/s. Sai Sugam Enterprises

another division bench in the case of CIT Vs. Smt. Kaushalya (1995) 216 ITR 660 (Bom) does not lay down the correct proposition of law.

4. As noted earlier, we find that the penalty notice dated 06.09.2016 did not explicitly convey to the assessee the specific fault/charge the assessee is being proceeded for levy of penalty. Resultantly, the show cause notice was found to be defective/invalid and therefore it was held by Ld CIT(A) to be bad in law, which impugned action we concur. For doing that we also rely on the decision of the Hon'ble Karnataka High Court in the case of CIT vs Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 (Kar) and the Department's SLP against it has been dismissed by the Hon'ble Supreme Court. We also find that Hon'ble Karnataka High Court in the case of CIT Vs. SSA's Emerald Meadows, reported in (2016) 73 taxmann.com 241 (Kar) endorsed the same view in Manjunatha Cotton and Ginning Factory (supra) and held as under:-

"3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act'), to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565/218 Taxman 423/35 taxmann.com 250(Kar).

4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of



ITA No.1474/Mum/2023
A.Y. 2011-12
M/s. Sai Sugam Enterprises

law arises in this appeal for determination by this Court. The appeal is accordingly dismissed.”

6. Since, we find that show cause notice issued by the AO dated 06.09.2016 u/s 274 r.w.s. 271(1)(c) of the Act is defective/invalid it is held to be bad in law. And therefore, consequential action of AO to levy penalty is held to be ‘null’ in eyes to law and ergo we uphold the action of the Ld. CIT(A) by relying on the Full Bench decision of the Hon’ble Jurisdictional High Court in the case of Mohd. Farhan A. Shaikh (supra) and other judicial precedents supra and consequently dismiss the appeal of the revenue.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on this 27/07/2023.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 27/07/2023.
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai



ITA No.1474/Mum/2023
A.Y. 2011-12
M/s. Sai Sugam Enterprises

