आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

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

आयकरअपीलसं. / ITA No.781/PUN/2019
निर्धारणवर्ष / Assessment Year : 2014-15

Suyog Sales Corporation, Suyog Group, Plot.9, Mitra Mandal Co.op. Society, Pune – 411009. PAN: AAEFS 2302 K	Vs	The ITO, Ward-5(2), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None.
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	18/07/2022
Date of pronouncement	19/07/2022

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)-4, Pune for the A.Y. 2014-15 dated 22.03.2019, emanating out of order under section 271(1)(c) of the Act.

2. No one appeared on behalf of the assessee, hence the case is decided ex-parte with the help of the ld.Departmental Representative(ld.DR) for the Revenue.

3. We have perused the records. It is observed that penalty notice under section 274 r.w.s 271(1)(c) of the Act dated 21.11.2016 is defective. The Assessing Officer(AO) has not struck off the relevant

words "concealed the particulars of income or furnished inaccurate particulars of income".

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

> *"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."

5. Respectfully following the proposition of law laid down by the Hon'ble Bombay High Court(supra), the defect in the notice is not curable, therefore, the order under section 271(1)(c) of the Act is void ab initio, hence, the appeal of the assessee is allowed.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 19th July, 2022.

Sd/-	**Sd/-**
(S.S.GODARA)	**(DR. DIPAK P. RIPOTE)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 19th July, 2022/ *SGR**

<u>**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.