

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
I.T.A. No.8/M/2015 (Assessment Year: **2010-2011**)

Soumitra G. Wadalkar, C/o, H.N. Motiwalla & Co., 508 Sharda Chambers, 33, New Marine Lines, Mumbai-20.	बनाम/ Vs.	DCIT-26(2), Charni Road, Mumbai.
स्थायी लेखा सं./PAN : AAAPW2899K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri H.N. Motiwalla
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Ajay, DR

सुनवाई की तारीख /Date of Hearing : 28.06.2016

घोषणा की तारीख /Date of Pronouncement : 30.06.2016

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 1.1.2015 is against the order of the CIT (A)-28, Mumbai dated 20.10.2014 for the assessment year 2010-2011. In this appeal, assessee raised three grounds in toto. The core issue involved in this appeal is CIT (A)'s decision in confirming the penalty levied by the AO u/s 271(1)(c) of the Act when it is not specifically mentioned whether the penalty is levied for 'concealment of income' or 'furnishing of inaccurate particular of income'.

2. Before me, at the outset, Ld Counsel for the assessee briefly narrated the background facts of the case and brought our attention to para 3 of the assessment order and read out the following.

"3.....penalty proceedings u/s 271(1)(c) read with section 274 of the Income Tax Act, 1961 are initiated for concealment of the income and furnishing the inaccurate particulars of his income."

3. Further, bringing our attention to the penalty order dated 29.8.2013, Ld Counsel for the assessee read out the operational para 3 and 6 which again read as under:-

"3. Penalty proceedings u/s 271(1)(c) of the IT Act, were separately initiated for concealment of income / furnishing inaccurate particulars of income....."

6. I am therefore, satisfied that the assessee has furnished inaccurate particulars of income and concealed income within the meaning of section 271(1)(c) of the Act as discussed above....."

4. Further also, Ld Counsel for the assessee brought our attention to the actual penalty notice issued to the assessee and mentioned that the officers ticked both the limbs of the clause (c) of notice u/s 271(1) of the Act. Summing up all the above, Ld Counsel for the assessee submitted that the officer are ambiguous about the reason for which the penalties are levied u/s 271(1)(c) of the Act.

5. After hearing both the parties and on perusal of the orders of the Revenue Authorities, I find, there is no clarity in the minds of the Revenue Authorities, whether the amount involved is a case of "concealment of income" or "furnishing of inaccurate particulars of income". In such circumstances, the assessee is entitled to relief considering the binding judgment of Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory [2013] 359 ITR 565 (Karn.) will also help the assessee. For all the above reasons, I find, the penalty levied by the AO and confirmed by the CIT (A) is not legally sustainable. Accordingly, grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 30th June, 2016.

Sd/-

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 30.6.2016

व.नि.स./ OKK, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai

6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

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