

IN THE INCOME TAX APPELLATE TRIBUNAL  
"E" Bench, Mumbai  
Before Shri Mahavir Singh (JM) & Shri B.R. Baskaran (AM)

I.T.A. No. 5457/Mum/2011  
(Assessment Year 2006-07)

Mrs. Shalini Karan Kumar 1305, Meghddot B, 13 <sup>th</sup> Floor Off. Joggers Park Lokhandwala Andheri West Mumbai-400 053. (Appellant)	Vs.	ACIT, CC-34 Room No. 104 1 <sup>st</sup> Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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PAN No. AMGPS9508P

Assessee by	Shri Darshan Gandhi
Department by	Mrs. Beena Subhash
Date of Hearing	30.8.2016
Date of Pronouncement	2.9.2016

ORDER

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order passed by Ld CIT(A)-41, Mumbai confirming the penalty of Rs.1,33,002/- levied by the AO u/s 271(1)(c) of the Act for assessment year 2007-07.

2. At the time of hearing, the Ld A.R raised a legal issue, viz., whether the assessing officer is entitled to levy penalty on another limb of sec. 271(1)(c) of the Act when the penalty proceedings were initiated on a different limb?

3. The Ld A.R submitted that the penalty u/s 271(1)(c) of the Act may be levied either for concealment of particulars of income or furnishing of inaccurate particulars of income. He further submitted that the assessing officer is entitled to levy penalty under the limb under which the proceedings were initiated. Inviting our attention to the assessment order, the Ld A.R submitted that the

assessing officer has initiated penalty proceedings u/s 271(1)(c) of the Act "for furnishing inaccurate particulars of income". Inviting our attention to paragraph 11 of the penalty order, the Ld A.R submitted that the assessing officer has, however, levied penalty for "concealment of particulars of income".

4. The Ld A.R submitted that an identical issue was considered by the co-ordinate bench of Mumbai Tribunal in the case of Dharni Developrs Vs. ACIT (2015)(61 taxmann.com 208) and the Tribunal has held that the penalty order cannot be sustained.

5. On the contrary, the Ld D.R submitted that the assessee has failed to offer proper explanations in terms of Explanation 1 to sec. 271(1)(c) of the Act. Accordingly he supported the order passed by Ld CIT(A). With regard to the legal issue urged by the assessee, the Ld D.R submitted that the assessee is raising the same for the first time before the Tribunal.

6. We have heard the rival contentions and perused the record. Even though above said legal issue was not urged before the lower authorities, since the same is a pure legal issue and all the facts & materials relating thereto are available on record, the same can be adjudicated by us as per the decision rendered by Hon'ble Supreme Court in the case of National Thermal Power Corporation(229 ITR 383). There is no dispute with regard to the fact that the assessing officer has initiated penalty proceedings u/s 271(1)(c) of the Act for "furnishing of inaccurate particulars of income". However he has levied penalty for "concealment of particulars of income". Hence the assessee has contended that the impugned penalty order is not sustainable. We notice that an identical issue was considered by the co-ordinate bench in the case of Dharni Developers (supra), wherein the contention of the assessee was accepted by following the decisions rendered in the following cases:-

- (a) K.Bhatia Vs. CIT (1992)(193 ITR 379)(Guj)
- (b) CIT Vs. Lakhdhir Lalji (1972)(85 ITR 77)(Guj)
- (c) Samson Perinchery Vs. Asst. CIT (ITA No.5625/Mum/2013)
- (d) CIT Vs. Manjunatha Cotton & Ginning Factory (359 ITR 565)(Kar)

7. In view of the above, we are of the view that there is merit in the contentions of the assessee on the legal issue urged by him. Accordingly, consistent with the view taken in the above said cases, we hold that the impugned penalty is not sustainable. Since we have quashed the penalty order on legal ground, there is no requirement to adjudicate the grounds urged on merits. Accordingly we set aside the orders passed by the tax authorities.

8. In the result, the appeal filed by the assessee is treated as allowed.

Order has been pronounced in the Court on 2.9.2016

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 2/9/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai

PS