

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA Nos.165 & 166/PUN/2016

निर्धारण वर्ष / Assessment Years : 2004-05 & 2009-10

The Income Tax Officer,
Ward-2, Jalna

.... अपीलार्थी/Appellant

Vs.

M/s. Mauli Steel Pvt. Ltd.,
Plot No.C-15, Additional MIDC Area,
Jalna – 431203

.... प्रत्यर्थी / Respondent

PAN: AABCM6718R

आयकर अपील सं. / ITA No.160/PUN/2016

निर्धारण वर्ष / Assessment Year : 2009-10

The Asst. Commissioner of Income Tax,
Jalna Circle, Jalna

.... अपीलार्थी/Appellant

Vs.

M/s. Gajlaxmi Steel Pvt. Ltd.,
F-4, Phase-II, Additional MIDC,
Aurangabad Road,
Jalna – 431203

.... प्रत्यर्थी / Respondent

PAN: AACCG0547R

अपीलार्थी की ओर से / Appellant by : Shri Ajay Modi, JCIT

प्रत्यर्थी की ओर से / Respondent by : None

सुनवाई की तारीख / Date of Hearing : 11.01.2018	घोषणा की तारीख / Date of Pronouncement: 17.01.2018
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आदेश / ORDER**PER SUSHMA CHOWLA, JM:**

Out of this bunch of three appeals, two appeals filed by Revenue relating to M/s. Mauli Steel Pvt. Ltd. and another appeal relating to M/s. Gajlaxmi Steel Pvt. Ltd. are against separate orders of CIT(A)-I, Aurangabad, all dated 27.11.2015 relating to assessment years 2004-05, 2009-10 & 2009-10, respectively, against deletion of penalty levied under section 271(1)(c) of the Income Tax Act 1961 (in short the 'Act').

2. This bunch of appeals filed by the Revenue on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to adjudicate the issues, reference is being made to the facts in ITA No.165/PUN/2016, relating to assessment year 2004-05.

3. The assessee in ITA No.165/PUN/2016, relating to assessment year 2004-05 has raised the following grounds of appeal:-

- i) *On the facts & in the circumstances of the case, the Learned CIT(A), Aurangabad has erred in deleting the penalty of Rs.18,20,679/- imposed under section 271(1)(c) of the Income-tax Act, 1961.*
- ii) *On the facts & in the circumstances of the case, the Learned CIT(A), Aurangabad has erred in not following his own orders wherein he has confirmed the fact of suppressed production in the Order of quantum appeal of the assessee for assessment year under consideration.*
- iii) *On the facts & in the circumstances of the case, the Learned CIT(A), Aurangabad has erred in not following his own orders wherein he had estimated the profit @ 4% of the estimated sale value of suppressed production which was nothing but concealed income. Under such circumstances, he should have confirmed the penalty also.*

- iv) *On the facts & in the circumstances of the case, the Learned CIT(A), Aurangabad be quashed and that the Order of the AO be restored.*
- v) *The appellant prays leave to adduce such further evidence to substantiate its case as the occasion may demand.*

4. Despite service of notice, none appeared on behalf of the assessee. However, we find that the issue raised in the present appeals is covered by the orders of the Tribunal. We proceed to decide the present appeals after hearing the learned Departmental Representative for the Revenue.

5. The only issue raised by the Revenue in the present appeals is against deletion of penalty levied under section 271(1)(c) of the Act.

6. Briefly, in the facts of the present case, the assessee was engaged in the business of manufacture of MS Ingots/Billets. In the assessment order passed under section 143(3) of the Act, the additions were made on account of estimated suppressed production of Ingots on the ground of variation in consumption of Electricity, vis-a-vis production. The CIT(A) confirmed the addition to the extent of gross profit @ 4% on the alleged suppressed production and sale out of books of account and unexplained investment in purchases. The Tribunal in ITA Nos.1432 & 1433/PN/2012 & ITA No.1632 & 1633/PN/2012, order dated 15.07.2015 deleted the additions made by the Assessing Officer and also the addition confirmed by the CIT(A) since, no evidence regarding unaccounted purchases or sales were found. However, before passing of the order of Tribunal (supra), the Assessing Officer imposed the penalty under section 271(1)(c) of the Act on the additions made in the hands of the assessee.

The Assessing Officer levied penalty on the estimated gross profit @4% of suppressed sale which addition was upheld by the CIT(A). The Assessing Officer held the assessee to have concealed the particulars of income to the extent of Rs.50,75,065/- (Rs.40,91,525/- + Rs.9,83,540/-) on which he levied penalty under section 271(1)(c) of the Act for concealing the particulars of income at Rs.18,20,679/-.

7. The CIT(A) referring to the order of the Tribunal (supra) noted that the quantum appeal filed by the assessee has been allowed in favour of the assessee and hence, he held that no penalty is leviable under section 271(1)(c) of the Act. Further, the estimated addition on account of unexplained investment in purchases was also deleted by the Tribunal. He observed that penalty levied under section 271(1)(c) could not be levied where the income was estimated after rejection of books of account.

8. After hearing the Ld. DR for the Revenue and on perusal of the material available on record on this limited issue, we find that in other cases of Steel group similar issue of levy of penalty under section 271(1)(c) of the Act was raised. The Tribunal in the case of ACIT, Jalna Circle, Jalna Vs. M/s. Rishi Steel & Alloys Pvt. Ltd. and other connected appeals in ITA Nos. 161, 162, 164 & 167/PUN/2016 relating to the assessment years 2004-05 and 2009-10, order dated 17.11.2017 relying on the orders of the Tribunal in the case of ACIT Vs. Bhagyalaxmi Steel Alloys Pvt. in ITA Nos.990 & 991/PUN/2015 relating to assessment year 2011-12, order dated 18.10.2017 and ACIT Vs. Shree Om

Rolling Mills Pvt. Ltd. in ITA No.993/PUN/2015, relating to assessment year 2009-10, order dated 10.11.2017, has held as under :

“5. On hearing the Ld. DR for the Revenue and on after going through the orders of the income-tax authorities as well as the orders of the Tribunal in the cases of Bhagyalaxmi Steel Alloys Pvt. Ltd. and Shree Om Rolling Mills Pvt. Ltd. (supra), we are of the opinion that the issues raised in these appeals stand covered by the said decisions in favour of the assessee and against the Revenue. For the sake of completeness of this order, we proceed to extract the operational paras hereunder of the said orders of the Tribunal hereunder. In the case of ACIT Vs. Bhagyalaxmi Steel Alloys Pvt. Ltd. (supra) the Tribunal decided the issue in favour of the assessee by holding in Para No.28 as under :

“28. From the above, we find the CIT(A) has considered all the aspects which led the assessee to disclose 982.82 units per MT which include that the assessee maintained the records properly and the books of accounts have been audited, no method for recorded day-to-day electricity consumption, declaration of 7% burning loss by various steel manufacturing units in Jalna & surrounding area, reports of Excise Department that for 1 MT of MS Ingots/Billets, 1026 electricity units are required, etc., and the decision of Hon’ble CE&S Tribunal and the Pune Bench of the Tribunal in the case of SRJ Peety Steels Pvt. Ltd. (supra) etc. Nothing incriminating material has been brought by the Revenue authorities to take a contrary view against the findings of CIT(A). We therefore find the order of the CIT(A) to be a reasoned one and accordingly affirm the same. Therefore, the grounds raised by the Revenue are dismissed.”

In the case of ACIT Vs. Shree Om Rolling Mills Pvt. Ltd. (supra) also the Pune Bench of the Tribunal (where both of us are parties) held as under :

“11. We heard both the parties and perused the orders of the Revenue as well as the written submissions of the assessee. The deletion of penalty u/s.271(1)(c) of the Act in respect of the estimated additions is a decided issue. There are many judgments to support the same. Therefore, in principle, we confirm the order of the CIT(A) and delete the penalty relatable to the estimated addition.

12. However, with regard to the penalty levied relating to the addition of Rs.76,48,922/- is concerned, we find, the revenue raised ground No.4 of its appeal. In the said ground No.4, the Revenue opines that penalty on the income relatable to the clandestine sale of unrecorded production needs to be confirmed, even if the related profits of Rs.76,48,922/- is estimated applying the flat rate of 4%. Ld. AR for the assessee argued that the said income is arrived at by the assessee again based on the estimation on the estimated sale of the goods clandestinely removed by the assessee. The unrecorded production was also the product of estimation by the DGCEI and eventually the same was accepted by the Settlement Commission. Absence of any incriminating material in support of the said clandestinely removed goods, its quantity and also earning of

*precise amount of income of the said goods, authorities resorted to estimations. Revenue is not privy to the relevant facts (1) precise quantity of such recorded sales and (2) precise income out of the sale of such goods and they merely relied on the figures given by the assessee. The quantity of unaccounted production is estimated by the Excise Department and the taxable income is estimated for the income-tax Department by the assessee applying the flat rate of 4%. Despite the absence of any discussion in the order of the CIT(A) on this part of the issue of argument, specially, the CIT(A) granted relief presuming that this segment of income is also arrived at by the estimation. In our view, the said presumption is fair and reasonable. **In any case, nothing is brought to our notice by the Ld. DR to demonstrate the estimations are not involved both in arriving at the figure of unrecorded sales and the taxable income. For our mind, it appears that the income of Rs.76,48,922/- is also the product of estimation and the same is accepted by the AO/CIT(A)/ITSC.** Therefore, it constitutes a reasonable presumption by the CIT(A). Therefore, the order of CIT(A) is fair and reasonable for the said reasons too. Accordingly, the grounds raised by the Revenue are dismissed.*

6. *From the above extracted portions of the order of the Tribunal, we find the Ld. DR's argument that the profit relatable to the unaccounted production constitutes concealed income and therefore the penalty is leviable stands rejected for the reason that the unaccounted sales as well as quantification of the related profits/concealed income/additional income has reduced in estimations despite the fact of unaccounted production and clandestine removal of the goods-cum-unaccounted sales the concealment is unsustainable in law, if the estimation of profits involved and no specific relatable income is precisely quantified. Therefore, we are of the opinion that the orders of the CIT(A) in these 4 appeals are fair in deleting the penalty for the above cited reasons also. Accordingly, all the grounds raised by the revenue in these 4 appeals are dismissed."*

9. In the facts of the present case before us, the addition made by the Assessing Officer on the clandestine removal of goods was estimated by the CIT(A). However, the said addition has been deleted by the Tribunal and the other addition made under section 69C of the Act has also been deleted by the Tribunal. In the totality of the above and in view of the ratio laid down by the Tribunal (supra), we uphold the order of CIT(A) in deleting the penalty levied under section 271(1)(c) of the Act. Accordingly, the grounds of appeal raised by the Revenue are dismissed.

10. The facts and issues in ITA Nos.166/PUN/2016 & 160/PUN/2016 are identical to the facts and issues in ITA No.165/PUN/2016 and our decision in ITA No.165/PUN/2016 shall apply *mutatis mutandis* to ITA Nos.166/PUN/2016 & 160/PUN/2016.

11. In the result, all the appeals of Revenue are dismissed.

Order pronounced on this 17th day of January, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 17th January, 2018.

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-I, Aurangabad;
4. The Pr.CIT-1, Aurangabad;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune