

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

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.1523 to 1528/PUN/2015

निर्धारण वर्ष / Assessment Years : 1998-99 to 2000-01 & 2002-03 to 2004-05

Shri Nanchand Bhogilal Shah,
MZSK & Associates,
Chartered Accountants,
Level 3, Riverside Business Bay,
Plot No. 84, Wellesley Road,
Near RTO, Pune – 411001

PAN : ADXPS3814J

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
Central Circle – 2(2), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rajiv Thakkar
Revenue by : Shri Ajay Modi

सुनवाई की तारीख / Date of Hearing : 25-01-2018
घोषणा की तारीख / Date of Pronouncement : 29-01-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These six appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-13, Pune dated 23-09-2015 common for the assessment years 1998-99 to 2000-01 and 2002-03 to 2004-05 confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The facts germane to the present appeals are : A search and seizure action u/s. 132 of the Act was carried out at the business and residential premises of assessee on 29-03-2003. During course of search Rs.40,00,000/- cash was seized from residence of assessee. A simultaneous search was also carried out in the case of Soni group comprising of Shriram Hiralal Soni and Jugalkishor H. Soni who are engaged in the business of finance, broking and money lending. On the basis of documents found and seized from the premises of Shriram H. Soni, the Department came to the conclusion that the assessee is engaged in lending of unaccounted cash to Soni Group. The Assessing Officer for the assessment years 1998-99 to 2000-01, 2002-03 and 2003-04, framed assessment u/s. 153A r.w.s. 143(3) of the Act. In assessment year 2004-05, assessment was made u/s. 143(3) of the Act. During the course of assessment proceedings, the Assessing Officer inter alia made additions on account of unaccounted interest income in all impugned assessment years. In assessment years 2000-01 and 2002-03, the Assessing Officer apart from above, made addition on account of unexplained investment in money lending business. The gist of additions made in the impugned assessment years is as under:

Assessment year	Unexplained investment in money lending business u/s. 29B of the Act	Unaccounted interest income	Disallowance (Property Tax)	Disallowance of expenses
1998-99	-	5,13,000	3,660	-
1999-00	-	5,13,000	3,660	-
2000-01	7,00,000	6,39,000	-	3,723
2002-03	5,00,000	17,91,000	-	-
2003-04	-	17,91,000	-	-
2004-05	-	17,91,000	-	-

2.1 The Assessing Officer initiated penalty proceedings u/s. 271(1)(c) of the Act in respect of additions made. The Assessing Officer levied penalty u/s. 271(1)(c) vide separate orders of even date i.e. 21-03-2013 qua additions made in respective assessment years. The details of penalty levied are as under :

Assessment Year	Penalty Levied
1998-99	Rs.1,28,900/-
1999-00	Rs.1,28,900/-
2000-01	Rs.4,13,270/-
2002-03	Rs.6,74,526/-
2003-04	Rs.5,36,865/-
2004-05	Rs.5,62,430/-

2.2 Aggrieved by the order levying penalty, the assessee filed appeals before the Commissioner of Income Tax (Appeals) for respective assessment years. The Commissioner of Income Tax (Appeals) vide impugned order common for all the six assessment years under appeal confirmed levy of penalty and dismissed the appeals of assessee. Now, the assessee is in second appeal before the Tribunal against confirming of penalty levied u/s. 271(1)(c) of the Act.

3. Shri Rajiv Thakkar appearing on behalf of the assessee submitted that the Tribunal in quantum appeals filed by the assessee for assessment years 1998-99 to 2004-05 in ITA Nos. 1008 to 1012, 1334 & 1335/PUN/2011 vide order dated 08-12-2017 has deleted the entire addition. The ld. AR furnished a copy of order of Tribunal dated 08-12-2017 in appeals arising from assessment proceedings. The ld. AR submitted that since the quantum additions have been deleted no penalty is to be levied on the assessee.

4. On the other hand Shri Ajay Modi representing the Department submitted that a perusal of order of Tribunal dated 08-12-2017 would show that the Tribunal has not exonerated the assessee completely. The Tribunal has directed the Assessing Officer to find out if any cash transactions are recorded in the name of assessee i.e. Shri Nanchand B. Shah and Shri Nanchand Bhogilal Shah and to make addition if his name exists. The Assessing Officer has yet to carry out this exercise, therefore, the order levying penalty may be restored to the Assessing Officer.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also perused the order of Co-ordinate Bench in assessee's appeal arising from assessment proceedings in ITA Nos. 1008 to 1012, 1334 & 1335/PUN/2011 (supra). A perusal of order of Co-ordinate Bench reveal that the Tribunal in principle has allowed the appeals of assessee and have deleted addition. The relevant extract of the findings of Tribunal reads as under :

“16. In view of the facts of the case and various decisions discussed above, we are of considered view that no addition can be made in the hands of assessee in absence of any corroborative evidence to link some suspicious entries found in the books of third party. As has been pointed earlier that mere recording of names closely resembling to the name of assessee in the books of Soni group does not give rise to presumption that the said names are pseudonym/coded names of assessee unless live connection is drawn by way of supporting evidence. Here, we would like to mention that before absolving the assessee completely from the additions made on basis of alleged cash transactions, we direct the Assessing Officer to re-examine the seized material. If the Assessing Officer finds that any transaction in cash is recorded in the name of assessee i.e. Nanchand B Shah or Nanchand Bhogilal Shah, the Assessing Officer may make addition of the same, in accordance with law. Before making any addition, if circumstances so arise, the Assessing Officer shall grant opportunity of hearing to the assessee, in accordance with law. Hence, the impugned order is set aside and appeals of assessee are allowed in principle, subject to the aforesaid directions.”

6. We find that the Tribunal has remitted the issue back to Assessing Officer to re-examine the seized material and to find if any cash transactions is recorded in the name of assessee i.e. Shri Nanchand B. Shah and Shri Nanchand Bhogilal Shah and to make addition of the same, in accordance with law. However, in principle the Tribunal has set aside the findings of Commissioner of Income Tax (Appeals). Once, the substratum for levying penalty has eroded, the penalty proceedings would not survive. Therefore, no useful purpose would be served by restoring penalty proceedings to the Assessing Officer.

7. Before parting with the order we would like to make it clear that in case while re-examining the seized material, the Assessing Officer comes across cash transactions recorded in the name of assessee in line with the directions of Tribunal and proposes to make additions, the Assessing Officer will be at liberty to initiate penalty proceedings, in accordance with law.

8. In the result, impugned order is set aside and the appeals of assessee are allowed.

Order pronounced on Monday, the 29th day of January, 2018.

Sd/-
(डॉ. करुणाकरा राव/D. Karunakara Rao)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(विकास अवस्थी / Vikas Awasthy)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th January, 2018

RK

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)-13, Pune
4. The Pr. Commissioner of Income Tax (Central), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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