

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "बी" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM**

आयकर अपील सं. / **ITA Nos.916 to 918/PUN/2016**  
निर्धारण वर्ष / **Assessment Years : 2007-08 to 2009-10**

Shri Dattatraya Shivaji Bandal,  
Prop. Kailash Food Industries,  
At Amrutwadi, Post Pachwad,  
Taluka-Wai, Dist. Satara  
PAN : AABPB8740K

.... अपीलार्थी/Appellant

Vs.

Dy. Commissioner of Income-tax,  
Satara Circle, Satara

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri M.K. Kulkarni  
प्रत्यर्थी की ओर से / Respondent by : Shri Hitendra Ninawe

सुनवाई की तारीख / <b>Date of Hearing : 05.02.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 09.02.2018</b>
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**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

There are 3 appeals filed by the Assessee under consideration involving the Assessment Years 2007-08 to 2009-10. All these appeals relate to the common issue of levy of penalty by the AO u/s.271(1)(c) of the Income Tax Act, 1961. CIT(A) confirmed the penalty levied by the AO in all the years under consideration. Aggrieved with the same, the assessee raised the common ground in these appeals and the said ground from A.Y. 2007-08 is extracted here as under :

"1. On the facts and circumstances of the case and in law the Ld.CIT(A)-4, Pune was not justified in confirming the penalty levied by the AO u/s.271(1)(c) of the Act to the extent of income declared in the original return of income. The penalty being not exigible be quashed."

2. At the outset, before us, Ld. Counsel for the assessee submitted that the said penalties in all the years under consideration are unsustainable on the

technical ground pertaining to the issue of satisfaction in initiating and concluding of the penalty proceedings. Ld. Counsel mentioned that the AO suffered from the ambiguity in his mind qua the limbs of clause (c) of section 271(1) of the Act. To demonstrate the same, Ld. Counsel brought our attention to the assessment orders and read out the relevant lines/Para No.7 which contains the satisfaction of the AO in initiating the penalty proceedings u/s.271(1)(c) of the Act. He submitted that the AO initiated the penalty proceedings for the offence of **"concealing the particulars of income"**. Further, bringing our attention to the penalty order dated 26-06-2012 for the A.Y. 2007-08, Ld. Counsel submitted that the AO mentioned both the limbs, i.e. **"furnished inaccurate particulars of his income" and "concealed his income"**. Further also, he submitted that the notices issued u/s.274 of the Act do not contain striking off/mark to any limb of clause (c) of section 271(1) of the Act (copy of notices issued u/s.274 of the Act are placed at pages 21 to 23 of the paper book). Ld. Counsel for the assessee relied on various decisions in support of his contention on the unsustainability of the penalty orders. In support of his argument, Ld. Counsel filed copies of the orders of the Tribunal in the case of M/s. D.P. Jagtap Vs. ACIT – ITA No. 418/PUN/2015 for the A.Y. 2010-11, order dated 15-02-2017 and Shri Dilip Motilal Chordiya Vs. DCIT – ITA No. 762/PUN/2017 for the A.Y. 2008-09, order dated 29-11-2017.

3. Ld. DR for the Revenue dutifully relied on the orders of the AO and the CIT(A) for all three years.

4. We have heard both the parties on the legal issue relating to the technicalities in initiating and concluding the penalty proceedings. The arguments of the parties are common to all the three appeals. To begin with, the recording of satisfaction of the AO at the time of initiation of penalty proceedings for the A.Y.

2007-08 (as given in Page 5 of the assessment order (Para 7) is extracted here as under :

*"7. . . . .the assessee is held to have concealed the particulars of his income and therefore, penalty proceedings u/s.271(1)(c) of the I.T. Act, are separately initiated in this case."*

Further, relevant extract from the penalty order dated 26-06-2012 for the A.Y. 2007-08 is also extracted as under :

*"7. In view of the above facts, I am satisfied that assessee has furnished inaccurate particulars of his income **and** has concealed his income for A.Y. 2007-08. Therefore, I consider this to be a fit case for imposing penalty u/s.271(1)(c) of the I.T. Act, 1961. . . . ."*

Further also, we have perused the show cause notices issued u/s.274 of the Act which are placed at pages 21 to 23 of the paper book and find that the AO ticked (✓) both the limbs in the notice and the same is evident on the face of it.

5. From the above extracts from the Assessment orders and Penalty orders as well as the notings on the show cause notice issued u/s.274 of the Act, we find that the arguments of Ld. Counsel merits favourable consideration.

6. Further, we also perused the orders of Pune Bench of the Tribunal relied upon by the Ld. Counsel for the assessee. Copies of the same are placed at pages 24 to 38 of the paper book. In the case of M/s. D.P. Jagtap Vs. ACIT (supra), the Tribunal at Para Nos. 10 and 11 held as under :

*"10. Thus, it is clearly evident that the Assessing Officer is not clear as to under what charge penalty has to be levied u/s. 271(1)(c) of the Act. The observations of the Assessing Officer are inconsistent while recording satisfaction, thereafter at the time of issuing notice and finally at the time of passing of the order. There is total non- application of mind by the Assessing Officer while passing penalty order.*

*Recently the Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Samson Perinchery in Income Tax Appeal No. 1154 of 2014 decided on 05-01-2017 has held that failure by the Assessing Officer to specify in notice issued u/s. 274 whether ITA No. 418/PUN/2015, A.Y. 2010-11 the penalty is being initiated for furnishing of inaccurate particulars of income or for concealment of*

*income is fatal. It reflects non-application of mind and renders the levy of penalty invalid.*

*11. Thus, in the light of above decisions and the facts of the case, we direct the Assessing Officer to cancel the penalty. The impugned order is set aside and the appeal of assessee is allowed."*

7. Similar view was taken by the Tribunal in the case of Shri Dilip Motilal Chordiya Vs. DCIT (supra). Contents of Para No. 5 and 6 are relevant. Para No.6 contains the finding of the Tribunal and the same is extracted as under :

*"6. In the present case, as noted hereinabove, it is seen that the AO has not recorded any satisfaction for levy of penalty in the assessment order but had levied penalty on both the limbs i.e., for concealment of income and for furnishing of inaccurate particulars of income while passing the penalty order. Considering the aforesaid facts in the light of the decision of Hon'ble Bombay High Court in the case of Samson Perinchery (supra), we are of the view that in the present case the basic condition for levy of penalty has not been fulfilled and that the penalty order suffers from non-exercising of jurisdiction power of AO and therefore penalty order cannot be upheld. We accordingly set aside the penalty order passed by AO. Thus, the ground of assessee is allowed."*

8. From the above facts as well as the legal propositions, it is evident that the Tribunal has been consistently disapproving the penalties levied by the AO when the (1) initiation is done for one of the two limbs and (2) penalty is levied for both the limbs of clause (c) of section 271(1) of the Act compositely. Therefore, we are of the opinion that the penalties levied by the AO in all these three appeals are unsustainable. Thus, the legal ground raised by the assessee for the A.Ys. 2007-08 to 2009-10 is allowed on technical grounds. Consequently, adjudication of the issues relating to merits amounts to an academic exercise. Therefore, the same are dismissed as academic.

9. In the result, all the three appeals of the assessee are partly allowed.

Order pronounced on this 09<sup>th</sup> day of February, 2018.

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / JUDICIAL MEMBER  
पुणे / Pune; दिनांक Dated : 09<sup>th</sup> February, 2018.  
Satish

**Sd/-**  
**(D.KARUNAKARA RAO)**  
लेखा सदस्य / ACCOUNTANT MEMBER

**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)-4, Pune
4. आयकर आयुक्त / The CIT-4, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B',  
ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune