

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

BEFORE MS. SUSHMA CHOWLA, JM AND  
SHRI ANIL CHATURVEDI, AM

आयकर अपील स / ITA No.1620/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

Jagdish Bhagwan Mirchandani,  
Survey 52A, Plot No.13-15,  
Blessings Bungalow, Serene  
Meadows, Gangapur Road,  
Nashik – 422013.

..... अपीलार्थी /  
Appellant

PAN : AETPM3224P.

बनाम v/s

Asst.Commissioner of Income Tax,  
Circle-1, Nashik.

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri C.H. Naniwadekar.

Revenue by : Shri Ajay Modi, JCIT.

सुनवाई की तारीख / Date of Hearing : 08.01.2018	घोषणा की तारीख / Date of Pronouncement: 28.02.2018
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आदेश / ORDER

**PER ANIL CHATURVEDI, AM :**

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) – 1, Nashik, dt.01.10.2015 for the assessment year 2010-11.

2. The relevant facts as culled out from the material on record are as under :

Assessee is an individual and stated to be engaged in the business of manufacturing of press parts and gaskets etc.

Assessee filed his return of income for A.Y. 2010-11 on 30.09.2010 declaring total income of Rs.63,75,450/-. The case was selected for scrutiny and thereafter, assessment was framed u/s 143(3) of the Act vide order dt.27.12.2012 and the total income was determined at Rs.69,79,664/- inter-alia by making addition of Rs.5,40,000/- on account of unsecured loans u/s 69A of the Act, disallowance of Rs.14,234/- for investment made in shares and mutual funds and disallowance of Rs.50,000/- on account of expenditure under the head "Wages and other expenses". On the disallowance of Rs.5,40,000/- on account of addition u/s 69A of the Act, AO vide order dt.27.06.2013 levied penalty of Rs.1,66,860/- u/s 271(1)(c) of the Act. Aggrieved by the penalty order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.01.10.2015 (in appeal No.Nsk/CIT(A)-1/489/2013-14) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following effective ground :

*"The learned Commissioner of Income Tax (Appeals) erred on facts and in law in confirming penalty u/s 271(1)(c) amounting to Rs.1,66,860/-. He failed to appreciate contentions and arguments advanced by the assessee in its behalf.*

3. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that the assessee had inadvertently shown Rs.5,40,000/- as unsecured loans but when it came to his knowledge during the course of assessment proceedings, he offered it as income. He therefore submitted that there was no concealment of income. He thereafter pointing to the assessment order submitted that AO has initiated penalty for concealment of income but in the notice dated 21.05.2013 issued

u/s 274 r.w.s. 271(1)(c) of the Act, AO had given notice for concealing the particulars of income or furnishing of inaccurate particulars of income. He thereafter submitted that while passing the penalty order u/s 271(1)(c) of the Act, the AO has levied penalty for furnishing inaccurate particulars of income. He therefore relying on the decision of Hon'ble Bombay High Court in the case of CIT Vs. Samson Perinchery (ITA No.1154 of 2014 order dt.05.01.2017), submitted that in the absence of proper show cause notice to assessee, penalty u/s 271(1)(c) cannot be levied and therefore urged that penalty levied by AO be deleted. Ld.D.R. on the other hand, supported the order of lower authorities.

4. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to levy of penalty u/s 271(1)(c) of the Act. In the present case, penalty has been levied at Rs.1,66,860/- on addition of Rs.5,40,000/- u/s 69A of the Act on account of unsecured loans. In the present case, the perusal of assessment order passed u/s 143(3) reveals that in the assessment order AO had recorded satisfaction for levy of penalty on account of concealment of income. Thereafter in the penalty order passed u/s 271(1)(c) of the Act, AO held that assessee had furnished inaccurate particulars of income. Even in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act, AO had stated that the penalty is for concealing the particulars of income or furnishing of inaccurate particulars of income. It is a settled law that while levying penalty for concealment, the AO has to record satisfaction and thereafter come to a finding in respect of one of the limbs, which is specified under

section 271(1)(c) of the Act. The first step is to record satisfaction while completing the assessment as to whether the assessee had concealed its income or furnished inaccurate particulars of income. Thereafter, notice u/s 274 read with Section 271(1)(c) of the Act is to be issued to the assessee. The Assessing Officer thereafter has to levy penalty under Section 271(1)(c) of the Act for non-satisfaction of either of the limbs. While completing the assessment, the Assessing Officer has to come to a finding as to whether the assessee has concealed its income or furnished inaccurate particulars of income. The Hon'ble Bombay High Court in CIT Vs. Shri Samson Perinchery in ITA No.1154 of 2014 with other ITA Nos.953 of 2014, 1097 of 2014 and 1226 of 2014, vide judgment dated 05.01.2017 held that where initiation of penalty is one limb and the levy of penalty is on other limb, then in the absence of proper show cause notice to the assessee, there is no merit in levy of penalty.

5. In the present case, as noted hereinabove, it is seen that the AO in the assessment order has recorded the case to be of concealment of income but in the penalty order passed u/s 271(1)(c) of the Act he had levied penalty on account of furnishing of inaccurate particulars of income. 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.**

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

Order pronounced on 28<sup>th</sup> day of February, 2018.

**Sd/-**

**(SUSHMA CHOWLA)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**

**(ANIL CHATURVEDI)**

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 28<sup>th</sup> February, 2018.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-1, Nashik.
4. Prl.CIT-1, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR, ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

// True Copy //

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