

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" 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.1142 & 1143/PUN/2016
निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

Bipin Engineering Pvt. Ltd.,
Gat No. 136, Varve Budruk,
Pune Satara Road, Tal.-Bhor,
Pune - 412205

PAN : AAACB7051R

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
Circle - 1(1), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sharad Shah
Revenue by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 08-03-2018

घोषणा की तारीख / Date of Pronouncement : 09-03-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These two appeals have been filed by the assessee assailing the orders of Commissioner of Income Tax (Appeals) confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). ITA No. 1142/PUN/2016 by the assessee is against the order of Commissioner of Income Tax (Appeals)-1, Pune dated 15-03-2016 for assessment year 2009-10. ITA No. 1143/PUN/2016 by the assessee is

against the order of Commissioner of Income Tax (Appeals) for assessment year 2010-11 of even date.

2. Shri Sharad Shah appearing on behalf of the assessee submitted that the assessee company is engaged in manufacturing of engineering goods and solar water heating systems. During the course of reassessment proceedings in both the impugned assessment years, the Assessing Officer made addition on account of bogus purchases by assessee from alleged Hawala dealers. In assessment year 2009-10 the Assessing Officer made addition of Rs.18,64,777/- and in assessment year 2010-11 the Assessing Officer made addition of Rs.54,09,276/- for similar reasons. In both the assessment years the Assessing Officer initiated penalty proceedings u/s. 271(1)(c) of the Act. The ld. AR contended that while recording satisfaction for initiating penalty proceedings in assessment year 2009-10, the Assessing Officer referred to both the limbs of section 271(1)(c) i.e. 'concealed the particulars of income' or 'furnished inaccurate particulars of income'. Even in the notice issued u/s. 274 r.w.s. 271(1)(c) the Assessing Officer did not strike of the irrelevant limb of section 271(1)(c) of the Act. Thus, ambiguity in the mind of Assessing Officer is reflected writ large from the manner of recording of satisfaction. The ld. AR further submitted that the Assessing Officer in order levying penalty mentioned that the penalty is being levied for furnishing of inaccurate particulars of income. The ld. AR placing reliance on the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Samson Perinchery reported as 392 ITR 4 and the decision of Hon'ble Karnataka High Court in the case of Commissioner of Income Tax Vs. Manjunatha Cotton & Ginning Factory reported as 359 ITR 565 submitted that penalty should have been levied on the charge for which satisfaction is recorded. In the case of assessee since recording of satisfaction itself is defective, therefore, the subsequent

proceedings arising there from are vitiated. The ld. AR prayed for deleting levy of penalty.

2.1 The ld. AR submitted that in assessment year 2010-11 the satisfaction has been recorded by the Assessing Officer in similar ambiguous manner and notice issued u/s. 274 r.w.s. 271(1)(c) is also defective as irrelevant limb for levy of penalty has not been struck of by the Assessing Officer. Thus, in both the assessment years under appeal, there is inconsistency in recording of satisfaction for levy of penalty u/s. 271(1)(c) and levy of penalty u/s. 271(1)(c) of the Act.

3. On the other hand Dr. Vivek Aggarwal representing the Department vehemently supported the findings of Commissioner of Income Tax (Appeals) in upholding the levy of penalty on merits, as well as on legal ground of validity of satisfaction recorded. The ld. DR submitted that while recording of satisfaction the Assessing Officer may have mentioned both the limbs for levy of penalty u/s. 271(1)(c) of the Act. However, while passing the order for levying penalty u/s. 271(1)(c), there is no ambiguity in the mind of Assessing Officer. The Assessing Officer has levied penalty only for furnishing of inaccurate particulars of income in both the assessment years. The ld. DR further submitted that in so far as alleged defect in non-striking of one of the limbs in the notice issued u/s. 274 r.w.s. 271(1)(c) is concerned, the same is not fatal for levy of penalty in view of the judgment of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Smt. Kaushalya & Ors. reported as 216 ITR 660.

4. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. We find that

the penalty orders have been challenged by assessee in both the assessment years under appeal on account of ambiguity in recording of satisfaction for levy of penalty u/s. 271(1)(c) of the Act. A perusal of assessment order dated 30-01-2014 for the assessment year 2009-10 reveal that the Assessing Officer has recorded satisfaction for levy of penalty u/s. 271(1)(c) of the Act as under :

“Further, the assessee has concealed the particular of its income or furnished inaccurate particulars of its income, penalty proceedings under section 271(1)(c) of the Act are being initiated separately.”

The Assessing Officer has mentioned both the charges for levy of penalty u/s. 271(1)(c) of the Act. The manner of recording satisfaction by Assessing Officer indicates that the Assessing Officer is not clear in his mind about the charge for levy of penalty. A close reading of satisfaction further reveal that both the charges have been mentioned with a conjunction **‘or’**. Thus, it is evident that recording of satisfaction suffers from vagueness and ambiguity of the charge/limb of section 271(1)(c) under which penalty is to be levied.

5. While passing the order levying penalty u/s. 271(1)(c) we find that the Assessing Officer has mentioned only one of the two grounds i.e. ‘furnishing of inaccurate particulars of income’. The relevant extract of the order levying penalty u/s. 271(1)(c) reads as under :

“In view of above facts it is held that assessee has furnished inaccurate particulars of income within the meaning of section 271(1)(c) of the Act only with a view to avoid tax and has committed default in view of provisions of section 271(1)(c) and explanation thereof, hence rendering it liable for penalty.”

However, we are of considered view that initial step for levy of penalty is recording of satisfaction. When the recording of satisfaction is defective, the subsequent proceedings are vitiated.

6. The Hon'ble Karnataka High Court in the case of Commissioner of Income Tax Vs. Manjunatha Cotton and Ginning Factory (supra) has held :

“60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.”

The Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Samson Perinchery (supra) has endorsed the reasoning given in the case of Commissioner of Income Tax Vs. Manjunatha Cotton & Ginning Factory (supra) for deleting penalty levied u/s. 271(1)(c) of the Act.

7. We find merit in the submissions of ld. AR. The indistinct manner in which satisfaction has been recorded by assessee is fatal to the penalty proceedings u/s. 271(1)(c) of the Act. Accordingly, the impugned order is set aside and the appeal of assessee is allowed.

8. The penalty proceedings in assessment year 2010-11 suffers from similar defects. Therefore, the findings given by us in the appeal of the assessee in assessment year 2009-10 would *mutatis mutandis* apply in assessment year 2010-11, as well. For the similar reasons, the impugned order is set aside and levy of penalty is deleted.

9. In the result, both the appeals of assessee are allowed.

Order pronounced on Friday, the 09th day of March, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 09th March, 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)-1, Pune
4. The Pr. CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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