

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

श्री अनिल चतुर्वेदी, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI ANIL CHATURVEDI, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1170/PUN/2016

निर्धारण वर्ष / Assessment Year : 2005-06

Assistant Commissioner of Income Tax,  
Ichalkaranji Circle, Ichalkaranji

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Ghodawat Energy (I) Pvt. Ltd.,  
A/p – Chipri, Distt.-Kolhapur-416101

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.G. Nahar  
Revenue by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 20-03-2018

घोषणा की तारीख / Date of Pronouncement : 23-03-2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-2, Kolhapur dated 16-03-2016 deleting levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2005-06.

2. The brief facts of the case as emanating from records are : The assessee is a private limited company engaged in manufacturing of Panmasala, Ghutkha and Electricity. In assessment order passed u/s.

143(3) r.w.s. 153A(b) of the Act certain additions/disallowances were made by Assessing Officer. One of the disallowances was in respect of excess depreciation claimed on windmill Rs.8,92,27,300/-. The assessee filed appeal before the Commissioner of Income Tax (Appeals) assailing the additions/disallowances. The Commissioner of Income Tax (Appeals) restricted the disallowances on account of excess claim of depreciation to Rs.34,79,380/-. The Assessing Officer vide order dated 24-03-2014 levied penalty of Rs.12,73,191/- u/s. 271(1)(c) in respect of disallowance confirmed by the Commissioner of Income Tax (Appeals). Against the penalty order, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide impugned order deleted penalty. Now, the Revenue is in appeal against the order of Commissioner of Income Tax (Appeals) in deleting levy of penalty u/s. 271(1)(c) of the Act.

3. Dr. Vivek Aggarwal representing the Department submitted that a perusal of impugned order would show that no reason whatsoever has been given by the Commissioner of Income Tax (Appeals) for deleting penalty levied u/s. 271(1)(c) of the Act. The order of Commissioner of Income Tax (Appeals) is non-speaking and thus, is liable to be set aside. The ld. DR further submitted that the assessee has claimed excess depreciation on windmill which was disallowed by Assessing Officer. The assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) confirmed part addition. The Assessing Officer has levied penalty on the addition confirmed by Commissioner of Income Tax (Appeals). Thereafter, the assessee has not challenged the order of Commissioner of Income Tax (Appeals) confirming disallowances of excess depreciation. Thus, the addition of Rs.34,79,380/- has attained finality. The Assessing Officer has

rightly levied penalty u/s. 271(1)(c) on the addition sustained by Commissioner of Income Tax (Appeals).

4. On the other hand Shri R.G. Nahar appearing on behalf of the assessee submitted that in paragraph 6 of the impugned order the Commissioner of Income Tax (Appeals) has given reasons for deleting levy of penalty. The ld. AR vehemently supporting the order of Commissioner of Income Tax (Appeals) prayed for dismissing the appeal of Revenue.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. In appeal the Revenue has assailed the action of Commissioner of Income Tax (Appeals) in deleting levy of penalty u/s. 271(1)(c) of the Act. A perusal of impugned order reveals that the Commissioner of Income Tax (Appeals) has not given reasoned finding for deleting the penalty. In paragraphs 1 to 4 of the impugned order, the Commissioner of Income Tax (Appeals) has given brief gist of facts of the case and has reproduced the submissions made by assessee. In paragraph 5 of the order the Commissioner of Income Tax (Appeals) has referred to the decision of Tribunal, Pune Bench in the case of Everready Investment Pvt. Ltd. (sic) and thereafter has concluded as under :

*“6. The decision of honourable Supreme Court in the case of Dilip N. Shrof v/s JCIT, Special Range, Mumbai 291 ITR 519 the decision is more exhaustive. It was held by the honourable Supreme Court that a duty may be enjoined on the assessee to make a correct disclosure of income but if the disclosure is based on opinion of an expert, only because his opinion is not accepted, the same by itself may not be sufficient for arriving at conclusion that assessee has furnished inaccurate particulars warranting penalty under section 271(1)(c). Since burden of proof in penalty proceedings vary from that in the assessment proceedings cannot be automatically be adopted.”*

6. We are of considered view that in the impugned order the Commissioner of Income Tax (Appeals) has not given any sustainable reason for deleting penalty levied u/s. 271(1)(c) of the Act. The reasoning given by Commissioner of Income Tax (Appeals) in concluding paragraph is cryptic and lacks clarity. Hence, we deem it appropriate to remit this appeal back to the file of Commissioner of Income Tax (Appeals) for passing a speaking order after affording opportunity of hearing to the assessee, in accordance with law. Accordingly, the impugned order is set aside and the appeal of Revenue is allowed for statistical purpose.

7. In the result, the appeal of Revenue is allowed for statistical purpose.

Order pronounced on Friday, the 23<sup>rd</sup> day of March, 2018.

Sd/-	Sd/-
(अनिल चतुर्वेदी / Anil Chaturvedi)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 23<sup>rd</sup> 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)-2, Kolhapur
4. आयकर आयुक्त / The CIT-II, Kolhapur
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