

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

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA Nos.107 & 108/PUN/2016
निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

Shailesh Mahadev Joshi,
Joshi Wadewale,
1175, Shivajinagar,
Near Balgandharv Rang Mandir,
Pune – 411005

.... अपीलार्थी/Appellant

PAN: ACAPJ8680J

Vs.

The Dy. Commissioner of Income Tax,
Central Circle 2(1), Pune

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.91 & 92/PUN/2016
निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

Joshi Wadewale Shivapur,
At Post Velu,
Pune – Satara Road,
Tal – Bhor, Pune – 412205

.... अपीलार्थी/Appellant

PAN: AAHFA1888M

Vs.

The Dy. Commissioner of Income Tax,
Central Circle 2(1), Pune

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.93 & 94/PUN/2016
निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

Joshi Wadewale Dagadusheth Ganapati,
237, Opp Dagdusheth Ganapati Temple,
Budhwar Peth,
Pune – 411002

.... अपीलार्थी/Appellant

PAN: AAEFJ8602M

Vs.

The Dy. Commissioner of Income Tax,
Central Circle 2(1), Pune

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.97 & 98/PUN/2016
निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

Joshi Wadewale Bhairabanala,
Sr.No.9, Himalaya Society,
Fatima Nagar, Hadapsar,
Pune – 411028

.... अपीलार्थी/Appellant

PAN: AAFFJ7839R

Vs.

The Dy. Commissioner of Income Tax,
Central Circle 2(1), Pune

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.101/PUN/2016
निर्धारण वर्ष / Assessment Year : 2009-10

Joshi Wadewale Vishrantwadi,
Shop No.1, Chandraneel Apartments,
Pune-Alandi Road,
Vishrantwadi, Pune – 411006

.... अपीलार्थी/Appellant

PAN: AADFJ3816A

Vs.

The Dy. Commissioner of Income Tax,
Central Circle 2(1), Pune

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.103 & 104/PUN/2016
निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

Joshi Wadewale Wakad,
1, Near Indira College,
Mumbai-Bangalore Highway,
Tathawade, Pune – 411033

.... अपीलार्थी/Appellant

PAN: AADFJ4399N

Vs.

The Dy. Commissioner of Income Tax,
Central Circle 2(1), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : S/Shri Nikhil Pathak /

Chandrasekhar L S

प्रत्यर्थी की ओर से / Respondent by : Shri Ajay Modi

सुनवाई की तारीख / Date of Hearing : 28.03.2018	घोषणा की तारीख / Date of Pronouncement: 28.03.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This bunch of eleven appeals filed by different assessee are against respective orders of CIT(A)-13, Pune, all dated 23.10.2015 relating to respective assessment years 2009-10 & 2010-11 against penalty levied under section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of appeals of related assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The issue raised in all the appeals is against levy of penalty under section 271(1)(c) of the Act.

4. The learned Authorized Representative for the assessee pointed out that the issue raised in the bunch of appeals stands covered by the order of Tribunal in related persons in ITA Nos.95 & 96/PUN/2016 in the case of Mrs. Vasundhara Shailesh Joshi Vs. DCIT, ITA Nos.105 & 106/PUN/2016 in the case of Joshi Wadewala Hadapsar Vs. DCIT, ITA Nos.99 & 100/PUN/2016 in the case of Joshi Wadewale Shewalwadi, relating to assessment years 2009-10 and 2010-11 and ITA No.102/PUN/2016 relating to assessment year 2010-11, order dated 27.03.2018.

5. First, we shall take up the appeals of assessee in ITA Nos.107 & 108/PUN/2016, relating to assessment years 2009-10 & 2010-11. In order to adjudicate the issue, reference is being made to the facts in ITA No.107/PUN/2016, relating to assessment year 2009-10.

6. The assessee in ITA No.107/PUN/2016, relating to assessment year 2009-10 has raised the following grounds of appeal:-

1. *The Id. CIT(A) erred in confirming the levy of penalty of Rs.5,83,779/- u/s. 271(1)(c) of the Act.*
2. *The Id. CIT(A) failed to appreciate that the additional income declared by the assessee was based on estimates and there was no concrete evidence found during the course of search that the assessee had generated the undisclosed income declared during the course of search and hence, the levy of penalty on the additional income declared by the assessee was not justified at all.*
3. *The Id. CIT(A) ought to have appreciated that the additional income was declared by the assessee in order to co-operate and buy peace with the dept. and therefore, no penalty was leviable in respect of the additional income declared by the assessee which was based on estimations and surmises.*

4. *The order of Ld. CIT(Appeals) passed u/s 250 of the Income Tax Act, 1961 in so far as it is against the appellant is opposed to law, equity, weight of evidence, probabilities, and fact and circumstances in the appellant case.*
5. *The order of penalty is bad in law for the reason that the notice for initiation of penalty as to whether it is concealment of income or furnishing of inaccurate particulars of income is discernable from the notice issued and consequently the order of penalty passed u/s 271(1)(c) of the Act on invalid notice does not have any legs to stand and penalty levied u/s 271(1)(c) of the Act deserves to be deleted under the facts and circumstance of the case.*
6. *The Id CIT (Appeals) was not justified in ignoring the action of Assessing officer who in assessment order has stated that assessee has conceals the particulars of income however notice were issued for concealment of income and furnishing the particulars of income The notice issued is ambiguous on the charge and hence bad in law.*
7. *The Ld CIT(Appeals) failed to appreciate that the appellant has neither concealed the particulars of income nor furnished inaccurate particulars of income to warrant levy of penalty and therefore penalty levied u/s 271(1)(c) of the Act, requires to be cancelled.*

7. In ITA Nos.107 & 108/PUN/2016, which relate to Shri Shailesh Mahadev Joshi, against whom search and seizure operations were carried out under section 132 of the Act. The residences of assessee and his wife Mrs. Vasundhara Shailesh Joshi were searched and incriminating documents were found. The assessee was the sole proprietor of certain concerns and was partner in other partnership firms along with his wife. The income which has been assessed in the hands of assessee is vide order passed under section 153A r.w.s. 143(3) of the Act. The additional income offered by the assessee during the course of search was offered to taxation and was assessed in the hands of assessee, on which the Assessing Officer held the assessee liable to levy of penalty under section 271(1)(c) of the Act.

8. Similar issue arose in the case of Mrs. Vasundhara Shailesh Joshi (supra). It may be pointed out herein itself that the additional income year-wise

was offered by Shri Shailesh Mahadev Joshi on behalf of himself, his wife and other partnership firms on the basis of documents found and seized during the course of search at his residence. The first set of documents relate to unaccounted sales of Wada Pav and others at different outlets. Another set of documents which were found on account of undisclosed investments in jewellery, deposits with Pat Sansthas, fixed deposits, etc.

9. We have already adjudicated similar issue in the case of Mrs. Vasundhara Shailesh Joshi (supra), wherein also the assessment was completed under section 153A r.w.s. 143(3) of the Act. While deciding the issue of levy of penalty levied under section 271(1)(c) of the Act, the Tribunal vide paras 16 to 19 held that the provisions of Explanation 5A to section 271(1)(c) of the Act were clearly attracted and the penalty levied under section 271(1)(c) of the Act has been upheld. We are referring to the said decision but the same is not being reproduced for the sake of brevity.

10. The issue in the present two appeals of Shri Shailesh Mahadev Joshi is squarely covered by the order of Tribunal in Mrs. Vasundhara Shailesh Joshi (supra) and applying the same parity of reasoning, we uphold the levy of penalty under section 271(1)(c) of the Act in both the years under appeal i.e. assessment years 2009-10 and 2010-11. The grounds of appeal raised by the assessee are thus, dismissed.

11. The facts and issues in ITA No.108/PUN/2016 are similar to the facts and issues in ITA No.107/PUN/2016 and our decision in ITA No.107/PUN/2016 shall apply *mutatis mutandis* to ITA No.108/PUN/2016.

12. Now, coming to the balance appeals in the bunch, wherein the appeals have been filed by different partnership firms for different assessment years. The individual assessee have raised additional grounds of appeal in each of the appeals which read as under:-

- “1] *The assessee submits that the learned A.O. had no jurisdiction to issue notice u/s. 148 to the assessee and accordingly, the assessment order passed u/s. 147 was invalid in law and therefore, the penalty levied u/s. 271(1)(c) on the basis of an invalid assessment order was null and void.*
- 2] *The assessee submits that in the course of search on Shri Shailesh Joshi and Smt. Vasundhara Joshi, incriminating documents belonging to the assessee firm were found and therefore, the learned A.O. ought to have issued notice u/s. 153C for assessing the undisclosed income in the hands of the assessee firm as against notice u/s. 148 issued by him and therefore, the assessment order passed u/s. 147 is bad in law and accordingly, the penalty levied u/s. 271(1)(c) on the basis of an invalid assessment order was null and void.”*

13. The Tribunal in earlier order had also decided the levy of penalty under section 271(1)(c) of the Act in the case of partnership firms with lead order in 105 & 106/PUN/2016 in the case of Joshi Wadewala Hadapsar Vs. DCIT (supra). The penalty levied under section 271(1)(c) of the Act has been deleted after adjudicating the issue in paras 20 to 36 of the order dated 27.03.2018. We are referring to the said decision but the same is not being reproduced for the sake of brevity.

14. The issue arising in the bunch of appeals except in ITA Nos.107/PUN/2016 & 108/PUN/2016, stands covered and accordingly, we direct the Assessing Officer to delete penalty levied under section 271(1)(c) of the Act. Consequently, the additional grounds of appeal raised by the assessee in the aforesaid appeals are allowed.

15. In the result, appeals in the case of Shailesh Mahadev Joshi are dismissed and appeals in the case of different assessee being partnership firms are allowed.

Order pronounced in open Court on this 28th day of March, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / **ACCOUNTANT MEMBER**

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 28th March, 2018.

GCVSR

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)-13, Pune;
4. The Pr. CIT (Central), Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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