

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", 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 No.1490/PUN/2015
निर्धारण वर्ष / Assessment Year : 2006-07

Praj Industries Limited,
Praj Tower 274 & 275,
Bhumkar Chowk,
Hinjewadi Road,
Hinjewadi, Pune - 411 057
PAN : AAACP6090Q

.... अपीलार्थी/Appellant

Vs.

DCIT, Central Circle-1(1),
Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Maruti Kadam
प्रत्यर्थी की ओर से / Respondent by : Shri Ajay Modi, JCIT

सुनवाई की तारीख / Date of Hearing : 22.03.2018	घोषणा की तारीख / Date of Pronouncement: 05.04.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-11,
Pune, dated 30-09-2015 for the Assessment Year 2006-07.

2. Grounds raised by the assessee read as under :

"1. The Ld.CIT(A) erred in confirming the levy of penalty u/s.271(1)(c) of the I.T. Act, 1961 of Rs.3,91,04,244/- being @100% of tax on Rs.3,91,04,244/- being income offered during the course of search proceedings in the statement u/s.132(2) and also offered in the return of income filed.

2. The Ld.CIT(A) ought not to have confirmed the levy of penalty u/s.271(1)(c) of the I.T. Act, 1961 of Rs.3,91,04,244/- being @100% of tax on Rs.3,91,04,244/- being income offered during the course of search proceedings in the statement u/s.132(2) and also offered in the return of income filed.

3. The penalty levied u/s.271(1)(c) of Rs.1,31,62,489/- requires to be deleted."

3. Assessee also filed the following additional grounds :

“1. The Ld.CIT(A) erred in confirming the levy of penalty u/s.271(1)(c) inspite of the fact that no proper satisfaction was recorded for initiation of penalty in the assessment order.

2. The levy of penalty u/s.271(1)(c) is bad in law as the same is not as per the provisions of I.T. Act, 1961.”

4. Briefly stated relevant facts are that assessee is a company and engaged in the business of erection and commission and sub contract work and fabrication of engineering goods. Assessee filed the return of income on 28-11-2006 declaring total loss of Rs.16,28,35,695/-. In response to notice u/s.147 of the Act, assessee filed return of income on 20-12-2012 declaring total income at Rs.20,11,24,204/-. Subsequently, the said return was revised declaring income of Rs.20,25,46,504/-. There was search action on the assessee. Assessee disclosed additional income of Rs.3,91,04,244/-. During the search action u/s.132(4) on 03-04-2012, a laptop used by Shri Anirudh Phadke was seized and a statement was recorded. Based on the cash inflow and outflow statements available in the laptop, AO proceeded to make addition of Rs.1.10 crores as income from undisclosed sources. AO also made addition of Rs.4,61,638 u/s.14A r.w.Rule 8D of the I.T. Rules, 1962. Eventually, AO determined the income of the assessee at Rs.21,40,08,142/- u/s.147 r.w.s. 143(3) of the Act. Further, AO also initiated penalty proceedings u/s.271(1)(c) of the Act and levied penalty of Rs.1,68,65,088/- on the assessee.

5. During the first appellate proceedings, CIT(A) confirmed the levy of penalty of Rs. 3,91,04,244/- on the additional income disclosed in the return filed in response to notice u/s.148 of the Act. While doing so, CIT(A) opined that assessee had indulged into debiting sham or inflated purchased in its books of account and assessee admitted the said allegations.

However, CIT(A) deleted quantum addition of Rs.1,10,00,000/- and the penalty levied on the said addition.

6. Aggrieved with the order of CIT(A) confirming the penalty on the extent of additional income, the assessee is in appeal before us with the grounds as well as the additional grounds extracted above.

7. Before us, at the outset, Ld Counsel for the assessee drew our attention to the contents of Para 3 of the assessment order and submitted that this is a case where penalty of Rs.3,91,04,244/- on the additional income disclosed by the assessee. AO initiated the penalty proceedings for '*concealing the particulars of income*'. Further, bringing our attention to Para No.5 of the penalty order dt 29-09-2014, Ld. Counsel for the assessee submitted that penalty is levied for '*furnishing inaccurate particulars*'. Therefore, Ld. Counsel for the assessee submitted initiating the proceedings on one limb of clause (c) section 271(1) and levying the penalty on the other limb of clause (c) is bad in law and unsustainable. To this proposition, he relied on the decision of Hon'ble jurisdictional High Court in the case of CIT Vs. Shri Samson Perinchery dated 05-01-2017 as well as the judgment of Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton and Ginning Factory 359 ITR 565.

8. On the other hand, Ld. DR for the Revenue submitted that the AO/CIT(A) is justified in levying the penalty as the assessee has offered the additional income during the search and filed the revised return consequent to search and no explanation whatsoever has been offered. Therefore, Ld. DR prayed for confirming the orders of the authorities below.

9. We heard both the parties on this legal issue and perused the orders of the Revenue on the issue of initiation and levy of penalty u/s.271(1)(c) of

the I.T. Act, 1961. We have considered the submissions made by the Ld. Counsel for the assessee on the additional grounds (legal in nature) relating to recording of satisfaction by the AO. In this connection, we proceed to extract the relevant lines from Para 3 of the assessment order and Para No.5 of the penalty order and the same reads as under :

“Para 3 of the assessment order :

3. *During search action, assessee has made disclosure of additional income of Rs.3,91,04,244/-. Subsequently, notice u/s.148 was issued in response assessee filed return declaring disclosure of Rs.3,91,04,244/- declared during search action.*

*Thus, to this extent, assessee **has concealed the particulars of income.** It is pertinent to note here that said income has been disclosed by the assessee due to search action only. Had there been no search action, this income would not have been disclosed by the assessee and the same would have escaped assessment. Therefore, penalty proceedings u/s.271(1)(c) of the Act is initiated separately.*

Para 5 of the penalty order :

5. *. Thus, in view of the above, I am convinced that the assessee has concealed income of Rs.5,01,04,244/- **by furnishing inaccurate particulars** and made itself liable for levy of penalty u/s.271(1)(c) of the I.T. Act, 1961. I, therefore, direct the assessee to pay a sum of Rs.1,68,65,088/- by way of penalty u/s.271(1)(c) of the I.T. Act, 1961, which is equal to sum of tax sought to be evaded,”*

From the above, it is clear that the AO initiated the penalty proceedings for the offence of **‘concealing the particulars of income’** and levied the same for **“furnishing inaccurate particulars”**. Therefore, it is a case where the AO did not have clarity of thought and AO suffered from ambiguity in his mind with regard to the applicable limb of clause (c) of section 271(1) of the Act to the facts of the case. Therefore, we find the penalty order of the AO falls short of legal requirement on the issue of recording of satisfaction. Initiation of penalty proceedings is made for one limb and the penalty was levied for other limb. Such penalty order is unsustainable in law legally. This view was already taken by the Pune Bench in a series of cases. The manner of initiating and levying of penalty

without making reference to the specific limb of clause (c) is unsustainable. AO is under obligation to specify the correct limb at the time of initiation as well as at the time of levy of penalty. Therefore, the penalty levied by the AO and confirmed by the CIT(A) is unsustainable on technical grounds. Further, this view of ours get strength by the judgment of Hon'ble jurisdictional High Court in the case of CIT Vs. Shri Samson Perinchery as well as the judgment of Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (supra). Accordingly, the additional ground No.1 raised by the assessee is allowed.

Considering the same, we find adjudication of other grounds raised by the assessee becomes an academic exercise. Therefore, the said grounds are dismissed as such.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced on this 05th day of April, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER
पुणे / Pune; दिनांक Dated : 05th April, 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)-11, Pune
4. आयकर आयुक्त / The CIT-11, 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//

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