

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", 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.811 & 812/PUN/2016
निर्धारण वर्ष / Assessment Years : 2007-08 & 2008-09

Mr. Pawan Vijay Jadhav,
Row House No.1,
Suyojit Garden,
Near Sahadeo Nagar,
Gangapur Road,
Nashik – 422103

.... अपीलार्थी/Appellant

PAN: AITPJ3384K

Vs.

The Income Tax Officer (Central)-1,
Nashik

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingte
प्रत्यर्थी की ओर से / Respondent by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 12.04.2018	घोषणा की तारीख / Date of Pronouncement: 25.04.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

Both the appeals filed by the assessee are against consolidated order of CIT(A)-13, Pune, dated 20.01.2016 relating to assessment years 2007-08 and 2008-09 against penalty levied under section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. Both the appeals relating to the same assessee were heard together and are being disposed of by this consolidated order for the sake of convenience. In order to adjudicate the issues, reference is being made to the facts in ITA No.811/PUN/2016 relating to assessment year 2007-08.

3. The assessee in ITA No.811/PUN/2016, relating to assessment year 2007-08 has raised the following grounds of appeal:-

1. *On the facts and circumstances of the case and in law the lower authorities erred in levying the penalty u/s 271(1)(c) a sum of Rs.33,825/- by disregarding the appellant's contention that the alleged additions were merely on account of treating part of the agriculture income as income from Other Sources and same are not based on any incriminating material found during the search.*
2. *On the facts and circumstances of the case and in law the lower authorities erred in invoking explanation to section 271(1)(c) without appreciating the fact that additions made were not based on any incriminating material found during the course of search. In view of this fact entire penalty order needs to be quashed.*

4. The learned Authorized Representative for the assessee submitted that there was delay of 18 days in filing the present appeals late before the Tribunal. In this regard, the assessee filed an affidavit explaining the reasons for the delay caused in filing the appeals. We find merit in the request of assessee and we proceed to decide the present appeals after condoning the delay of 18 days in filing the appeals late before the Tribunal.

5. The issue raised in the present appeal is against levy of penalty under section 271(1)(c) of the Act. The grievance of assessee before us is the preliminary issue of levy of penalty by the Assessing Officer without specifying correct limb of section 271(1)(c) of the Act.

6. Briefly, in the facts of the case, search and seizure action had taken place under section 132 of the Act in Suyojit Group of cases on 17.09.2010. Because of documents seized relating to assessee, provisions of section 153C of the Act were invoked and assessment was completed under section 143(3) r.w.s. 153C of the Act. The assessee had filed the return of income under section 153C of the Act and the Assessing Officer was of the view that the entire income returned by the assessee under section 153C of the Act was treated as undisclosed and concealed income, for which penalty proceedings under section 274 r.w.s. 271(1)(c) of the Act were separately initiated. Thereafter, penalty was levied by the Assessing Officer under section 271(1)(c) of the Act holding that *I am satisfied that the assessee has without any reasonable cause, furnished an inaccurate particulars of income and thereby concealed his income to the extent of ₹ 1,10,540/-*.

7. The CIT(A) upheld the levy of penalty under section 271(1)(c) of the Act.

8. The assessee is in appeal against the order of CIT(A).

9. The learned Authorized Representative for the assessee before us pointed out that preliminary issue arises in the present appeal, wherein the levy of penalty is on both the limbs of section 271(1)(c) of the Act and hence, violates provisions of section, where initiation was on one of the limbs.

10. The learned Departmental Representative for the Revenue on the other hand, pointed out that it is case of search and the income was detected and

penalty was initiated for concealment of income. He further stated that penalty has been levied for concealment of income, since the assessee had furnished inaccurate particulars.

11. We have heard the rival contentions and perused the record. Penalty under section 271(1)(c) of the Act for concealment is leviable where either the assessee has concealed its income or furnished inaccurate particulars of income. The Assessing Officer while finalizing the assessment has to come to finding as to which limb the said section has been violated by the assessee. In the present case, where after search and seizure operations on Suyojit group, proceedings under section 153C of the Act were initiated against the assessee and he filed return of income in response to the said notice declaring the said income. The Assessing Officer was of the view that the assessee having filed the said return of income after issue of notice under section 153C of the Act had concealed its income. The satisfaction recorded by the Assessing Officer while completing assessment was that the assessee had concealed its income. However, while levying penalty, the penalty was levied on both the counts of furnishing inaccurate particulars of income and thereby concealing his income to the extent of ₹ 1,10,540/-. The basis for levy of penalty for concealment is one addition of ₹ 1,10,540/-. Once the addition has been made on one account, then the requirement of law is that penalty has to be levied on one of the limbs of section 271(1)(c) of the Act. However, the Assessing Officer while levying penalty has failed to come to such a conclusion and has levied penalty for violation of both the limbs of section 271(1)(c) of the Act. Such an order passed by Assessing Officer cannot stand.

12. The Hon'ble Bombay High Court in CIT Vs. Shri Samson Perinchery in Income Tax Appeal No.1154 of 2014 with other Income Tax Appeals Nos.953 of 2014, 1097 of 2014 and 1226 of 2014, judgment dated 05.01.2017 has held that where initiation of penalty is on 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. We find that the said satisfaction suffers from *lacuna*. Further, we also find that while levying penalty under section 271(1)(c) of the Act, the Assessing Officer has failed to come to a finding as to which limb of section has not been fulfilled by the assessee. The Assessing Officer holds that there is thus, concealment of income for furnishing of inaccurate particulars of such income on the part of assessee and levies penalty under section 271(1)(c) of the Act.

13. Following the same parity of reasoning, we hold that where the Assessing Officer had recorded satisfaction of assessee having concealed its income while completing assessment proceedings and had levied penalty on both the counts i.e. furnishing of inaccurate particulars of income and concealment of income, then the penalty order passed by Assessing Officer suffers from infirmity and the same is cancelled. Accordingly, penalty levied under section 271(1)(c) of the Act in the hands of assessee is thus, deleted. The grounds of appeal raised by the assessee are thus, allowed.

14. The facts and issues in ITA No.812/PUN/2016 are identical and our decision in ITA No.811/PUN/2016 shall apply *mutatis mutandis* to ITA No.812/PUN/2016.

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

Order pronounced on this 25th day of April, 2018.

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

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

पुणे / Pune; दिनांक Dated : 25th April, 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), Nashik;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', 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