

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", 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 No.975/PUN/2016
निर्धारण वर्ष / Assessment Year : 2004-05

L&T John Deere Pvt. Ltd.,
(Formerly known as John Deere
Equipment Pvt. Ltd.),
(now merged with John Deere
India Private Limited,
Tower XIV,
Cybercity, Magarpatta City,
Hadapsar, Pune – 411 028
PAN : AAACJ4233B

.... अपीलार्थी/ Appellant

Vs.

ACIT, Circle-11(1),
Pune

.... प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Achal Sharma

सुनवाई की तारीख / Date of Hearing : 29.05.2018	घोषणा की तारीख / Date of Pronouncement: 30.05.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This is the appeal filed by the assessee against the order of CIT(A)-7, Pune, dated 16-02-2016 for the Assessment Year 2004-05.

2. Assessee raised the following grounds of appeal :

“The following grounds are taken without prejudice to each other-

On facts and in law,

1. *The learned CIT(A) erred in holding that the penalty order passed by the learned A.O. was within limitation without appreciating that the said order passed was barred by limitation and hence, the same should be declared null and void.*

2. *The learned CIT(A) erred in confirming the levy of penalty of Rs. 476,150/- u/s.271(1)(c) of the Income Tax Act.*

3. *The learned CIT(A) erred in holding that the assessee company has made an incorrect claim of deduction u/s. 35D and hence, the learned A.O. was justified in levying the penalty on the said disallowance.*

4. *The learned CIT(A) failed to appreciate that the assessee company had not furnished any inaccurate particulars of income and hence, there was no reason to levy the penalty.*

5. *The learned CIT(A) erred in not appreciating that the claim of deduction u/s. 35D was a legal claim and simply because the claim was not accepted did not mean that the assessee had filed inaccurate particulars of income.*

6. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

2.1 Assessee also raised the following additional ground in the appeal:

“1. The assessee submits that the penalty levied u/s.271(1)(c) be held to be null and void since the penalty order as well as the notice u/s.274 r.w.s.271(1)(c) was issued without proper application of mind.

The assessee submits that the additional ground raised is legal in nature and as all the facts are on record, the assessee requests for admission of the above ground.”

2.2 On considering the additional ground raised by the assessee being legal in nature, the said ground is admitted for adjudication.

3. Briefly stated relevant facts are that the assessee is a joint venture company and is engaged in the business of manufacturing of tractors and allied activities. Assessee filed the return of income on 29-10-2004 showing loss of Rs.32,34,62,680/-. During the year, assessee increased the authorised share capital from Rs.150 crores to Rs.175 crores. During the course of assessment, the AO noticed that assessee made a claim u/s.35D of the Act on account of preliminary expenditure amounting to Rs.23,83,565/-. AO is of the opinion that claim of Rs.10,23,135/- pertains to prior period expenses and claims of Rs.13,60,430/- pertains to post period. Eventually, AO disallowed the said claim of the assessee (expenses incurred towards ROC filing fees, stamp duty for increasing the share capital). AO also disallowed certain

other expenses viz., (1) product development expenses (2) payment to John Deere India Pvt.Ltd. (3) deferred tax equalisation liability and (4) Information Technology charges. At the end of assessment proceedings u/s.143(3) of the Act, AO assessed the returned loss at Rs.18,40,64,600/- as against loss of Rs.32,34,62,680/-. Penalty proceedings u/s.271(1)(c) are also initiated separately **for furnishing inaccurate particulars of income** and levied penalty of Rs.4,76,150/- @100% of tax sought to be evaded.

4. In the First Appellate proceedings, the CIT(A) upheld the penalty to Rs.4,76,150/- levied by the AO.

5. Aggrieved with the order of CIT(A), the assessee is in appeal before us with the grounds as well as additional ground (legal in nature) extracted above.

6. Before us, on the legal issue raised by way of additional ground, Ld. Counsel for the assessee referring to the notice dated 27-12-2006 issued by the AO u/s.274 r.w.s. 271(1)(c) of the Act submitted that the AO issued the notice without striking off the particular limb of section 271(1) of the Act. For the sake of completeness, the same is extracted as under :

***“*have concealed the particulars of your income or.....
furnished inaccurate particulars of income.”***

6.1 Ld. Counsel also referred to Para No.6 of the penalty order dated 28-01-2013 and the same reads as under :

“6. In view of the above, I am convinced that the assessee has concealed income of Rs.13,60,430/- by furnishing inaccurate particulars and made itself liable for levy of penalty u/s.271(1)(c) of the I.T. Act, 1961.”

Ld. Counsel for the assessee submitted that the AO failed to strike off the particular limb of section 271(1) of the Act and therefore, the

penalty levied u/s.271(1)(c) of the Act is to be held as null and void and prayed for quashing of the same. In support of this legal ground, he relied on various decisions of Pune Benches of the Tribunal, judgment 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.

7. On the other hand, Ld DR for the Revenue relied on the orders of the AO/CIT(A).

8. We heard both the sides on this issue and perused the orders of the Revenue and considered the decisions relied on by the Ld. Counsel for the assessee. We find the AO vide assessment order dated 27-12-2006 has initiated the penalty proceedings holding as under :

*“3.1..... Penalty proceedings u/s.271(1)(c) are separately initiated for **“furnishing of inaccurate particulars of income.”**”*

However, the AO vide penalty order dated 28-01-2013 has levied the penalty stating that **“assessee has concealed income of Rs.13,60,430/- by furnishing inaccurate particulars”**. Therefore, on the issue of satisfaction of the AO, we find 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. 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 is unsustainable on technical grounds. 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).

9. Further, we find, in a recent case, the Mumbai Bench of the Tribunal in the case of Sachin Manohar Deshmukh Vs. ACIT – ITA No.3767/Mum/2016, dated 23-03-2018 has dealt with an identical issue and quashed the penalty order of the AO. The operational para No.12 of the order of the Tribunal is extracted here as under :

*“12. We have given a thoughtful consideration to the issue before us, and after deliberating on the facts are of the considered view that now when the A.O after recording his satisfaction had initiated the penalty proceedings in the body of the assessment order for furnishing inaccurate particulars and concealment of income, therefore, putting the assessee to notice and calling upon him to explain as to why penalty may not be imposed on him under Sec. 271(1)(c) for concealment of income or furnishing of inaccurate particulars of income, followed by imposing of penalty under Sec. 271(1)(c) in his hands for „furnishing of inaccurate particulars of income“, can in no way be construed as having fairly put the assessee to notice as regards the default/defaults for which penalty was sought to be imposed in his hands. We are of the considered view that a **failure on the part of the A.O to clearly put the assessee to notice as regards the default/defaults for which penalty under Sec. 271(1)(c) is sought to be to be imposed on him**, has to be visited with and accorded the same treatment as in a case where the A.O had failed to strike off the irrelevant default in the ‘Show cause’ notice, because, in both the situations the assessee is not informed and rather is left guessing of the default/defaults for which he is being proceeded against for. We thus in the backdrop of our aforesaid observations are of a strong conviction that as the **A.O had clearly failed to discharge his statutory obligation of fairly putting the assessee to notice as regards the default/defaults for which he was being proceeded against**, therefore, are of the considered view that the penalty under Sec. 271(1)(c) of Rs.12,14,140/- imposed by the **A.O in clear violation of the mandate of Sec. 274(1) of the Act, cannot be sustained**. We thus not able to persuade ourselves to subscribe to the imposition of penalty by the A.O, therefore, **set aside the order of the CIT(A) who had upheld the same**. The penalty of Rs.12,14,140/-imposed by the A.O under Sec.271(1)(c) is quashed in terms of our aforesaid observations.”*

In view of the above discussion, we hold that the orders of AO/ CIT(A) are required to be set-aside on the legal ground of recording of

satisfaction by the AO. We therefore direct the AO to delete the penalty. Accordingly, the additional ground raised by the assessee is allowed.

10. Consequently, adjudication of original grounds raised by the assessee on merits become academic and therefore, the said grounds are dismissed as academic.

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

Order pronounced in the open court on this 30th day of May, 2018.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(D. KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 30th May, 2018
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-7, Pune
4. The Pr.CIT-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A Bench" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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