

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, 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.1717/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Rajesh Prabhakar Bhave,  
J/25, AWCHS, Salunke Vihar,  
Pune-411 002.  
PAN : ADQPB5039D

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-7, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte

Revenue by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 18.06.2018

घोषणा की तारीख / Date of Pronouncement : 22.06.2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-4, Pune dated 11.05.2016 for the assessment year 2011-12 confirming levy of penalty u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The brief facts of the case as emanating from records are: The assessee is a salaried person working with Videcon Telecommunication Ltd. The assessee also derives pension from army and interest income on Bank FDR/savings

account. In the assessment year under appeal, the assessee filed return of income on 26.07.2011 declaring total income of Rs.25,99,170/-. The case of assessee was selected for scrutiny under CASS. Accordingly, statutory notice u/s.143(2) of the Act was issued to the assessee on 16.08.2012. In the course of assessment proceedings, the Assessing Officer found that during the period relevant to assessment year 2011-12, the assessee has also received salary from M/s. Nokia Siemens Network Ltd. The Assessing Officer made following additions in the returned income:

- i) Salary income received from M/s. Nokia Siemens Networks Pvt. Ltd Rs.8,92,172/-.
- ii) Interest income earned on FD and savings account Rs.4,58,788/-

The Assessing Officer initiated penalty proceedings u/s.271(1)(c) of the Act in respect of additions made. The Assessing Officer vide order dated 27.06.2014 levied penalty of Rs.4,17,447/- u/s.271(1)(c) of the Act.

3. Aggrieved by the penalty order dated 27.06.2014, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The First Appellate Authority vide impugned order confirmed the levy of penalty and dismissed the appeal of assessee. Now, the assessee is in second appeal before the Tribunal assailing the levy of penalty on merits. The assessee has also filed additional ground of appeal challenging levy of penalty on the legal ground of defect in recording satisfaction. The additional ground raised by assessee reads as under:

*“On the facts and in the circumstances of the case and in law the Lower Authorities have erred in levying the penalty u/s.271(1)(c) of the Income Tax Act, 1961 without recording correct satisfaction/charge in the order/notice therefore entire order u/s.271(1)(c) is void-ab-initio and deserves to be struck down.”*

4. Shri Pramod Shingte appearing on behalf of assessee submitted that the Assessing Officer while recording satisfaction for levying penalty u/s.271(1)(c) of the Act has mentioned both the charges i.e. furnishing inaccurate particulars of income and concealing the particulars of income. While passing order levying penalty, the Assessing Officer has mentioned both the limbs of section 271(1)(c) of the Act by using the expressions “concealed it’s income by furnishing inaccurate particulars of income”. The ld. AR submitted that the manner in which satisfaction has been recorded and the penalty order has been passed indicates ambiguity in the mind of Assessing Officer with respect to charge for levying penalty. Concealment of income and furnishing inaccurate particulars of income are two different expressions and the penalty could not be levied for both the charges.

5. On the other hand, Dr. Vivek Aggarwal representing the Department vehemently defending the satisfaction recorded at the time of passing assessment order and the order levying penalty u/s.271(1)(c) of the Act submitted, that there was no ambiguity in the mind of Assessing Officer while initiating penalty proceedings. The Assessing Officer has mentioned both the limbs of section 271(1)(c) of the Act while initiating penalty proceedings and has levied penalty on same charges. It is not a case, where penalty proceedings have been initiated on one limb and penalty is levied for another limb of section 271(1)(c) of the Act.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below. We observe that while recording satisfaction for initiating penalty proceedings u/s.271(1)(c) of the Act, the Assessing Officer has observed as under:

*“4.....Since the assessee has concealed the particulars of income at the time of filing the return of income penalty proceedings under section*

*271(1)(c) of the I.T. Act is initiated separately for furnishing inaccurate particulars of income and concealing the particulars of income.”*

7. While passing order levying penalty u/s.271(1)(c) of the Act, the Assessing Officer observed as under:

*“6..... I am satisfied that assessee, without sufficient and reasonable cause, under the deliberate intention concealed it's income by furnishing inaccurate particulars of income to the extent of Rs.13,50,960/-.”*

8. A perusal of the assessment order where satisfaction has been recorded for initiating penalty proceedings reflects vagueness in the mind of Assessing Officer while recording satisfaction. The charge for levying penalty is not clearly decipherable from the satisfaction recorded by the Assessing Officer. The Assessing Officer initiated his satisfaction with the charge of concealment of particulars of income. However, by the time he concluded his intention to levy penalty, he introduced other limb of section 271(1)(c) of the Act i.e. furnishing of inaccurate particulars of income. The Assessing Officer finally mentioned both the charges u/s.271(1)(c) of the of the Act with conjunction “**and**”.

Whereas, in the order of levying penalty, the Assessing Officer mentioned that it is a case of concealment of income by furnishing inaccurate particulars of income. The Assessing Officer is not clear in his mind with respect to charge for which penalty is to be levied. The close look at the manner in which both the charges of section 271(1)(c) of the Act have been mentioned in the assessment order while recording satisfaction and the in the order levying penalty indicate that the Assessing Officer was ambiguity in his mind i.e. whether it is a case of concealment of income or furnishing inaccurate particulars of income.

9. The Hon'ble Supreme Court of India in the case of Ashok Pai Vs. CIT, reported as 292 ITR 11 has held that concealment of income and furnishing

inaccurate particulars of income are two different expressions carrying different connotations. In the instant case, as we have pointed earlier, the exact charge for levying penalty is not clearly decipherable from the recording of satisfaction. The penalty order is also ambiguous on the charge for which penalty is levied. The Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton & Ginning Factory, reported as 359 ITR 565 (Karn.) has held that the assessee should be aware of the exact charge on which the Assessing Officer proposes to levy penalty u/s. 271(1)(c) of the Act so that he can defend the same. Under similar set of facts where the penalty was levied on both limbs of section 271(1)(c), the Co-ordinate Bench of the Tribunal in the case of Kanhaiyalal D. Jain Vs. ACIT, in ITA No.1201 to 1205/PN/2014 decided on 30.11.2016 has held as under:

*“26. Where concealment of income and furnishing of inaccurate particulars of income are two different connotations, then as per provisions of the Act, the satisfaction has to be recorded by the Assessing Officer before initiating penalty proceedings as to under which limb the case of assessee falls. In the present set of facts, the satisfaction as recorded by the Assessing Officer which is evident from the assessment order itself does not establish the case of Revenue against the assessee that it is liable for levy of penalty for concealment under which limb i.e. for concealment of income or for furnishing of inaccurate particulars of income. The notice issued under section 274 of the Act by the Assessing Officer also does not show cause the assessee as to make him aware of exact charge levied against him. In the absence of same, it causes prejudice to the right of reasonable opportunity to be allowed to the assessee before levy of penalty under section 271(1)(c) of the Act. Consequently, penalty notice issued in the present case suffers from infirmities i.e. lack of satisfaction and lack of notice being issued in making the assessee aware of exact-charge against him, hence the same is quashed. The penalty proceedings completed pursuant to such notice are vitiated and the same are held to be invalid.”*

10. Thus, in the facts of the case and decisions discussed above, we hold that the penalty order is not sustainable and is liable to be quashed. We direct accordingly. Thus, additional ground raised in the appeal by assessee is allowed.

11. Since, the appeal of assessee is allowed on legal ground, the ground raised by assessee challenging levy of penalty on merit becomes academic and hence, is dismissed, as such.

12. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

Order pronounced on Friday, the 22nd day of June, 2018

Sd/-	Sd/-
(डी. करुणाकरा राव/D. KARUNAKARA RAO)	(विकास अवस्थी /VIKAS AWASTHY)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 22<sup>nd</sup> June, 2018.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-4, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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