

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.1103/PUN/2016
निर्धारण वर्ष / Assessment Year : 2007-08**

Chandrakant S. Agarwal (HUF),
Khandelwal Jain & Associates
Chartered Accountants,
Ist Floor, Alankar Cinema Building,
Near Railway Station,
Pune – 411 001
PAN : AABHA1199K

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-8,
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sarnesh Khandelwal
Revenue by : Shri Ajay Modi

सुनवाई की तारीख / Date of Hearing : 13.06.2018
घोषणा की तारीख / Date of Pronouncement : 20.06.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals)-6, Pune dated 10.02.2016 for the Assessment Year 2007-08 in connection with levy of penalty u/s.271(1)(c) of the Act.

2. Briefly stated relevant facts include that the assessee is an HUF and is engaged in the business of Trading in Tiles and Building construction material. There was survey action u/s.133A of the Act on the assessee on 13-03-2007. Said survey action resulted in detection or

discovery of excess stock. Assessee offered Rs.25 lakhs as additional to cover up the said discrepancies in the stock and paid the dues taxes on the said additional income. At the end of assessment u/s.143(3) of the Act, no other addition was made by the AO. However, the penalty proceedings were initiated for concealment of income and eventually the AO levied the penalty of Rs.7,75,827/-. In the First Appellate proceedings, the CIT(A) considered the submissions on the aspect of recording of satisfaction by the AO and held the notice u/s.274 r.w.s. 271(1)(c) of the Act as valid one. Further, the CIT(A) considered the submissions of the assessee that is (1) no penalty is leviable in cases where there is no difference between the assessed income and returned income; and (2) penalty is not leviable as there is no tax sought to be evaded. At the end of the First Appellate proceedings, the CIT(A) rejected the said submissions made by the assessee and eventually, upheld the penalty levied by the AO.

3. Aggrieved with the order of CIT(A), the assessee filed the present appeal before the Tribunal with the following solitary ground :

“ On facts and circumstances prevailing in the case and as per provisions of the law it be held that penalty u/s.271(1)(c) levied by the AO and confirmed by the Ist Appellate Authority is contrary to the provisions of law, unjustified and unwarranted. It further be held that the case of the appellant is not covered by the mischief of provisions of Sec.271(1)(c) of the Act warranting, justifying levy of any penalty in terms of the said section & there is no scope for levy of penalty u/s.271(1)(c) of the Act. The penalty levied by the AO be deleted.”
in law,

4. Before us, Ld. Counsel for the assessee submitted referring to the order of Tribunal in the case of Ashok S. Agarwal in ITA no.1227/PUN/2016, dated 05-06-2018 for the A.Y. 2007-08 and submitted that, in the said also, there was survey action us.133A of the

Act on the same date of 13-03-2007. During the said survey action, the assessee disclosed the excess stock by the assessee in the return of income filed subsequently before the due date and the penalty is held unsustainable in law. Contents of Para No.12 and 13 of the order of Tribunal are relevant. Therefore, the solitary issue raised in this appeal now stands decided in favour of the assessee. Further, Ld. Counsel for the assessee relied on the following decisions/judgments :

1. *CIT Vs. SAS Pharmaceuticals 11 taxmann.com 207 (Delhi)*
2. *AMI Estates Pvt. Ltd. Vs. DCIT 81 taxmann.com 363 (Mumbai-Trib.)*
3. *Kiran Sitaram Chavan Vs. ITO – ITA Nos. 1895 to 1900/PUN/2014, dated 17-10-2017.*
4. *Girdhari Ishwarlal Chhablani Vs. ITO – ITA No.2089/PUN/2012, dated 18-01-2017*
5. Ld. DR for the Revenue relied on the orders of AO/CIT(A).
6. We heard both the sides, perused the orders of the Revenue authorities and the paper book filed before us. We have also perused the decisions relied on by the assessee. On going through the facts of the case, we find this is a case where assessee filed the return of income incorporating the additional income subsequent to the survey action and the said return has been accepted without making any addition. Assessee offered the additional income and subjected the same to tax. Survey action took place before end of the financial year. In the above background of the facts, we find this issue is squarely covered by the judgment of Hon'ble Delhi High Court in the case of CIT Vs. SAS Pharmaceuticals (supra). For the sake of completeness, we proceed to extract the conclusion given by the High Court and the same reads as under :

“12. After considering the respective submissions of the learned counsel for the parties, we are of the view that the argument of the learned counsel for the assessee has to prevail as it carried substantial weight. It is to be kept in mind that Section 271(1)(c) of the Act is a penal provision and such a provision has to be strictly construed. Unless the case falls within the four-corners of the said provision, penalty cannot be imposed. Sub-section (1) of Section 271 stipulates certain contingencies on the happening whereof the AO or the Commissioner (Appeals) may direct payment of penalty by the assessee. We are concerned herewith the fundamentality provided in Clause

(c) of Section 271 (1) of the Act, which authorizes imposition of penalty when the AO is satisfied that the assessee has either;

(a) Concealed the particulars of his income; or

(b) Furnished inaccurate particulars of such income.

13. It is not the case of furnishing inaccurate particular of income, as in the income tax return, particulars of income have been duly furnished and the surrendered amount of income was duly reflected in the income tax return. The question is whether the particulars of income were concealed by the assessee or not. It would depend upon the issue as to whether this concealment has reference to the income tax return filed by the assessee, viz., whether concealment is to be found in the income tax return.

14. We may, first of all, reject the contention of the learned counsel for the Revenue relying upon the expression „in the course of any proceedings under this Act“ occurring in Sub-section (1) of Section 271 of the Act and contending that even during survey when it was found that the assessee had concealed the particular of his income, it would amount concealment in the course of „any proceedings“. The words „in the course of any proceedings under this Act“ are prefaced by the satisfaction of the AO or the Commissioner of Income Tax (Appeals). When the survey is conducted by a survey team, the question of satisfaction of AO or the Commissioner (Appeals) or the Commissioner does not arise. We have to keep in mind that it is the AO who initiated the penalty proceedings and directed the payment of penalty. He had not recorded any satisfaction during the course of survey. Decision to initiate penalty proceedings was taken while making assessment order. It is, thus, obvious that the expression „in the course of any proceedings under this Act“ cannot have the reference to survey proceedings, in this case.

15. It necessarily follows that concealment of particulars of income or furnishing of inaccurate particular of income by the assessee has to be in the income tax return filed by it. There is sufficient indication of this in the judgment of this Court in the case of Commissioner of Income Tax, Delhi-I Vs. Mohan Das Hassa Nand 141 ITR 203 and in Reliance Petroproducts Pvt. Ltd. (supra), the Supreme Court has clinched this aspect, viz., the assessee can furnish the particulars of income in his return and everything would depend upon the income tax return filed by the assessee. This view gets supported by Explanation 4 as well as 5 and 5A of Section 271 of the Act as contended by the learned counsel for the Respondent.

16. No doubt, the discrepancies were found during the survey.

This has yielded income from the assessee in the form of amount surrendered by the assessee. Presently, we are not concerned with the assessment of income, but the moot question is to whether this would attract penalty upon the assessee under the provisions of Section 271(1)

*(c) of the Act. Obviously, no penalty can be imposed unless the conditions stipulated in the said provisions are duly and unambiguously satisfied. Since the assessee was exposed during survey, may be, it would have not disclosed the income but for the said survey. **However, there cannot be any penalty only on surmises, conjectures and possibilities. Section 271(1)(c) of the Act has to be construed strictly. Unless it is found that there is actually a concealment or non-disclosure of the particulars of income, penalty cannot be imposed. There is no such concealment or non-disclosure as the assessee had made a complete disclosure in the income tax return and offered the surrendered amount for the purposes of tax.***

17. We, thus, answer the questions as formulated above, in favour of the assessee and against the Revenue finding no fault with the decisions of the CIT (A) as well as the Tribunal. As a result, this appeal is dismissed.

6.1 Further, we find the Pune Bench of the Tribunal in the case of Ashok S. Agarwal Vs. DCIT in ITA No.1227/PUN/2016, dated 05-06-2018 relied on the decision of Pune Bench of the Tribunal in the case of Nandkishor Tulsidas Katore Vs. ACIT in ITA Nos.2174 to 2180/PN/2014, dated 14-12-2016 for the A.Yrs. 2002-03 to 2008-09; wherein the judgment of Hon'ble Delhi High Court in the case of CIT Vs. SAS Pharmaceuticals (supra) was followed and eventually allowed the appeal filed by the assessee. The decisions relied on by the Ld. Counsel for the assessee also support the case of the assessee. In the instant case also, the survey action gave rise to the disclosure of Rs.25 lakhs before the end of the financial year and due date for filing of return of income is still not expired. On these facts, in the case of Shri Ashok S. Agarwal (supra) and others, the penalty u/s.271(1)(c) of the Act is not found sustainable in law. The logic is very obvious that the return of income filed by the assessee based on the complete books of account including the transactions relating to the said Rs.25 lakhs, is not alleged

to contain any concealed income or furnishing of inaccurate particulars of income within the meaning of section 271(1)(c) of the Act.

Therefore, considering the settled nature of the issue, we find the solitary issue raised by the assessee has to be decided in favour of the assessee. Accordingly, the order of CIT(A) is set aside. Thus, the ground raised by the assessee is allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced on this 20th day of June, 2018.

Sd/-

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

(D. KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 20th June, 2018.
Satish

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त (अपील) / The CIT(A)-6, Pune
4. आयकर आयुक्त / The Pr.CIT-5, 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