

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 Nos. 1755 to 1758/PUN/2016

निर्धारण वर्ष / Assessment Years: 2008-09 to 2011-12

M/s. Vijay Construction,  
10, Shivsagar Society,  
College Road, Thatte Nagar,  
Nashik-422 001.

PAN : AAGFV5234M

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Central-1, Nashik.

.....प्रत्यर्थी / Respondent

Assessee by : None

Revenue by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 19.06.2018

घोषणा की तारीख / Date of Pronouncement : 29.06.2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM**

This bunch of four appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-13, Pune dated 15.05.2016 common for assessment years 2008-09, 2009-10, 2010-11 and 2011-12 confirming levy of penalty u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

Since, the issue involved in all these four appeals is identical and the grounds raised are on same set of facts, these appeals are taken up together for adjudication and are disposed of vide this common order.

2. These appeals have been filed with the delay of 26 days. The assessee has filed separate applications seeking condonation of delay citing reasons for delay in filing of the appeals. After perusal of same, we are satisfied the delay in filing of appeals is unintentional and has been caused for the bona-fide reasons stated in application. Thus, the assessee/appellant has explained the delay in filing of the appeals. Accordingly, the delay in filing of the appeals is condoned and the appeals are admitted to be heard on merits.

3. The common ground raised in the appeals is against levy of penalty u/s. 271(1)(c) of the Act.

4. A perusal of the assessment order dated 28.02.2013 for the assessment year 2008-09 passed u/s.143(3) r.w.s. 153C of the Act shows that the penalty u/s. 271(1)(c) of the Act has been initiated for concealing particulars of income. On perusal of the penalty order dated 27.08.2013 for assessment year 2008-09 reveals that the Assessing Officer has levied penalty for furnishing of inaccurate particulars of income. The expressions used by the Assessing Officer for levying penalty in the order read as under:

*“9. 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 Rs.1,50,000/- on account of unexplained expenditure.....”*

5. The manner in which penalty has been levied by the Assessing Officer clearly indicates that there was ambiguity in the mind of the

Assessing Officer qua the charge for levy of penalty u/s. 271(1)(c) of the Act. Even in the notice issued u/s. 274 r.w.s. 271(1)(c) of the Act, the Assessing Officer has not deleted the irrelevant limb of section 271(1)(c) of the Act for levying penalty while communicating to the assessee the exact charge for which penalty has been levied.

6. The Hon'ble Bombay High Court in the case of CIT Vs. Shri Samson Perinchery, reported as 392 ITR 4 has held that penalty cannot be levied on the charge other than the charge for which satisfaction was recorded. The relevant extract of the decision of Hon'ble High Court reads as under:

*“6.The above submission o the part of the Revenue is in the face of the decision of the Supreme Court in the decision of the Supreme Court in Ashok Pai v/s.CIT 292 ITR 11[relied upon in Manjunath Cotton & Ginning Factory (supra)]-wherein it is observed that concealment of income and furnishing of inaccurate particulars of income in Section 271(1)(c) of the Act, carry different meanings/ connotations. Therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under Section 271(1)(c) of the Act, for initiation of penalty proceedings will not warrant/ permit penalty being imposed for the other breach. This is more so, as an Assessee would respond to the ground on which the penalty has been initiated /notice issued. It must, therefore, follow that the order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated, and it cannot be on a fresh ground of which the Assessee has no notice.”*

7. In the present case, the Assessing Officer has initiated penalty proceedings u/s. 271(1)(c) of the Act on the charge of concealing particulars of income. However, at the time of levying penalty and while issuing notice u/s. 274 of the Act, the Assessing Officer wrecked the penalty proceedings by mentioning the other limb of section 271(1)(c) of the Act i.e. furnishing inaccurate particulars of income as well. In view of the decision of the Hon'ble Jurisdictional High Court, the order levying penalty would not stand the test of judicial scrutiny. Thus, in view of our above findings, we hold the penalty order as bad in law and hence, is set aside.

8. In the result, appeal of the assessee for assessment year 2008-09 is allowed.

9. In assessment years 2009-10, 2010-11 and 2011-12, we observe that the Assessing Officer has initiated penalty proceedings by recording satisfaction on the charge of concealment of income. However, at the time of levy of penalty and in the notice issued u/s.274 r.w.s. 271(1)(c), the Assessing Officer has mentioned both the limbs of section 271(1)(c) of the Act i.e. concealment of income and furnishing inaccurate particulars of income. The penalty order in assessment years 2009-10, 2010-11 and 2011-12 are similar to the one passed in assessment year 2008-09. In the earlier part of the order, we have quashed the penalty order passed in assessment year 2008-09. Thus, findings given by us in assessment year 2008-09 would mutatis-mutandis apply to the assessment years 2009-10, 2010-11 and 2011-12. Accordingly, penalty orders for assessment years 2009-10, 2010-11 and 2011-12 are quashed and the appeals of the assessee in all the three assessment years are allowed.

10. To sum up, appeals of the assessee for assessment year 2008-09, 2009-10, 2010-11 and 2011-12 are allowed.

Order pronounced on Friday, the 29<sup>th</sup> day of June, 2018.

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

पुणे / Pune; दिनांक / Dated : 29<sup>th</sup> June, 2018

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-13, Pune.
4. The Pr. CIT (Central), Nagpur.
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.