

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.2449 & 2450/PUN/2016
निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

M/s. Namrata City Centre,
592, Raviwar Peth,
Talegaon Dabhade,
Maval, Pune
PAN : AAAAN6057F

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Central Circle-2(1),
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri V.L. Jain
Revenue by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 28.06.2018
घोषणा की तारीख / Date of Pronouncement : 18.07.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are two appeals filed by assessee against the consolidated order of CIT(A)-12, Pune, dated 12-08-2016 for the A.Yrs. 2011-12 & 2012-13. These appeals are filed in connection with the penalty levied u/s.271(1)(c) of the Act. Assessee raised similar ground in both the appeals.

We shall first take up appeal ITA No.2449/PUN/2016.

ITA No.2449/PUN/2016
A.Y. 2011-12

2. The solitary ground raised by the assessee is extracted here as under :

“The CIT(A) has erred in confirming the penalty of Rs.5,96,374/- levied under section 271(1)(c) of the Income Tax Act, 1961.”

3. Briefly stated relevant facts for the A.Y. 2011-12 include that the assessee is a firm and filed the return of income on 27-09-2011 declaring total loss of Rs.7,31,023/-. There was search action u/s.132 of the Act in the Namrata Group of cases on 12-02-2013. Certain incriminating documents were seized. Assessee disclosed additional income at Rs.31.47 lakhs on account of receipt of on-money above the agreement value of flats/shops. In response to notice u/s.153C of the Act, assessee filed the return of income on 09-12-2013 declaring total income of Rs.24,16,677/- and the income returned was accepted. However, the AO levied penalty of Rs.5,96,374/- u/s.271(1)(c) of the Act for concealment of income and furnishing of inaccurate particulars. In the First Appellate proceedings, the CIT(A) upheld the penalty levied by the AO.

Similarly, for the A.Y. 2012-13, the AO levied penalty of Rs.42,17,130/- with identical ‘satisfaction’. CIT(A) confirmed the said penalty based on the reasoning given in A.Y. 2011-12.

4. Aggrieved with the order of CIT(A) the assessee is in appeal before the Tribunal with the aforesaid ground extracted above for both the assessment years.

5. Before us, at the outset, Ld. Counsel for the assessee raised an oral ground which is legal in nature and submitted that this is a case where the AO failed to record valid satisfaction in the assessment order during which the penalty proceedings were initiated. Highlighting the

legal requirement of making a specific reference to of the limb of clause (c) of section 271(1) of the Act and relying on various binding judgments in the case CIT Vs. Samson Perinchery (2017) 392 ITR 4 (Bom.) 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, Ld. Counsel demonstrated that the penalty levied by the AO is unsustainable in law. In this regard, he brought our attention to the assessment order as well as the penalty order highlighting the above legal deficiencies.

6. Per Contra, Ld. DR for the Revenue relied on the orders of AO/CIT(A).

7. We heard both the parties on this specific legal issue, i.e. recording of proper satisfaction by the AO. We perused the order of the AO and find the satisfaction recorded by the AO for initiating the penalty proceedings u/s.271(1)(c) of the Act is relevant for extraction. Therefore, the same is reproduced as under :

*“5. The disclosure in respect of A.Y. 2011-12 has been adhered by the assessee while filing return in response to notice u/s.153C. These facts also prove that the above stated on-money had been received by the assessee but it was not disclosed by it while filing its original return of income on 27-09-2011. This undisclosed income of Rs.31.47 lakhs could not have come to the notice of the department but for the search/survey action in the case of the assessee group. Hence, these facts prove that there was a concealment of income in the original return of income and hence the undersigned is satisfied that the assessee is **liable for penalty proceedings u/s.271(1)(c) of concealment of income and furnishing of inaccurate particulars**, accordingly, penal proceedings u/s.271(1)(c) are hereby separately initiated.”*

7.1 We also perused the penalty order dated 28-09-2015 and find the satisfaction recorded by the AO for levying the penalty u/s.271(1)(c) of the Act is relevant for extraction. The said satisfaction reads as under :

*“07. In view of the above facts, I am satisfied that the **assessee has furnished inaccurate particulars of its income and thereby has concealed his income for the A.Y. 2011-12.** Therefore, I consider this to be a fit case for imposing penalty u/s.271(1)(c) of the I.T. Act, 1961. Accordingly, a penalty of Rs.5,96,374/- is hereby imposed on the assessee u/s.271(1)(c) of the I.T. Act, 1961 which is calculated as under..”*

From the above, it is evident that at the time of initiation of penalty proceedings in the assessment, AO mentioned both the limbs of clause (c) of section 271(1) of the Act. It happens only when the AO suffers from ambiguity in his mind. Thus, this manner of recording of satisfaction suggests the existence of ambiguity with reference to applicability of specific limb.

Therefore, we are of the opinion that considering the above referred binding judgments such penalty order is unsustainable in law legally. AO is under obligation to specify the correct limb at the time of initiation as well as at the time of levy of penalty. In view of the above deliberation on this issue, we are of the opinion that the penalty order is liable to be quashed on this legal issue. Thus, the order of CIT(A) is set-aside and direct the AO to delete the penalty. Accordingly, the solitary ground raised by the assessee is allowed.

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

ITA No.2450/PUN/2016
A.Y. 2012-13

9. The facts, issues, decision of AO/CIT(A) and the arguments of the parties are common. Therefore, our decision given in ITA No.2449/PUN/2016 setting aside the order of CIT(A) shall apply to this appeal too. Accordingly, the ground raised by the assessee in this appeal is allowed.

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

11. To sum up, both the appeals of the assessee are allowed.

Order pronounced on 18th day of July, 2018.

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

पुणे / Pune; दिनांक / Dated : 18th July, 2018.
Satisb

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-12, Pune.
4. The Pr. CIT, Central, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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