

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.1961 to 1965/PUN/2016
निर्धारण वर्ष / Assessment Years : 2000-01 to 2002-03 & 2004-05 to
2005-06

Dhananjay Hari Gadgil,
1/44, Rajwada Vasahat,
Sangli - 416 416
PAN : ABEPG0866F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer (Central),
Kolhapur

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
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 five appeals filed by same assessee against the consolidated order of CIT(A)-11, Pune dated 15-06-2016 for the A.Yrs. 2000-01 to 2002-03 and 2004-05 to 2005-06 respectively. All these appeals relate to penalty levied u/s.271(1)(c) of the Act. Assessee raised similar grounds of appeal as well as an additional ground (legal in nature) in all these appeals. Therefore, for the sake of convenience, we proceed to decide the appeals in this composite order.

We shall first take up appeal ITA No.1961/PUN/2016 for A.Y. 2000-01.

ITA No.1961/PUN/2016
A.Y. 2000-01

2. Grounds raised by the assessee are extracted here as under :

“1. The Ld.CIT(Appeals) erred on facts and in law in upholding penalty of Rs.2,60,000/- u/s.271(1)(c) of the Act. He failed to appreciate the facts of the case and the legal position as also the contentions and arguments advanced by the assessee in this regards.

2. The appellant craves leave to add, alter, delete or substitute all or any of the above grounds of appeal.”

2.1 Assessee also raised the following additional ground (legal nature) and the same reads as under :

“1. The assessee submits that no proper satisfaction was recorded by the Ld. AO in the asst. order and even the notice issued u/s.274 r.w.s.271(1)(c) was without proper application of mind and hence, the penalty order passed u/s.271(1)(c) is bad in law and the penalty levied may kindly be deleted.

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.”

3. After hearing both the sides and considering the fact that the additional ground raised by the assessee being purely a legal one and all facts are already before the lower authorities, therefore, the same is admitted for adjudication in the light of various binding judgments on the same.

4. Briefly stated relevant facts for A.Y. 2000-01 include that the assessee is an individual and derives income from house property and income from other source. Assessee filed original return of income on 31-08-2000 declaring total income of Rs.6,36,170/-. There was search and seizure action u/s.132(1) of the Act at the residential as well as business premises of Gagdil group in which assessee was also covered. Notice u/s.153A(a) was issued on the assessee to which he filed the return of income in Form 2D declaring total income of Rs.17,89,520/-. In the return filed u/s.153A of the Act, assessee offered undisclosed income of Rs.11,53,356/- on account of investment made in purchase of

shares of Sangli Bank Ltd., bank deposits, interest income, dividend income etc. At the end of assessment proceedings u/s.143(3) r.w.s. 153A of the Act, AO levied penalty of Rs.3,81,000/- u/s.271(1)(c) of the Act. The figures vary for other assessment years. In the First Appellate proceedings, the CIT(A) upheld the penalty levied by the AO.

5. Aggrieved with the order of CIT(A) the assessee is in appeal before the Tribunal with the grounds/additional ground extracted above.

6. Before us, at the outset, Ld. Counsel for the assessee referring to Additional ground (legal in nature) submitted that this is a case where the AO failed to record proper satisfaction in the assessment order during which the penalty was initiated. Highlighting the legal requirement of making a specific reference to the specific limb of clause (c) of section 271(1) of the Act and relying on various binding judgments in the case CIT Vs. Shri 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.

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

8. 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 :

“Since the assessee failed to disclose the above income of Rs.11,53,356/- in the original return filed on 31-08-2010, the penal proceedings u/s.274 r.w.s. 271(1)(c) of the Act are separately initiated.”

8.1 We also perused the penalty order dated 25-06-2008 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 :

“5. In view of the above, I am satisfied that the assessee failed to disclose the true and correct income in the original return. For this the provisions of section 271(1)(c) of the Act are clearly attracted. For this failure on the part of the assessee to disclose correct income in the return filed u/s.139 of the Act, a penalty of Rs.3,81,000/- (rupees three lakhs eighty one thousand only) as calculated below is levied after obtaining prior approval of the Addl.CIT, Central Range-1, Pune, vide his letter No.Pn. Addl.CIT/CR-1/Appr.u/s.274/2008-09, dated 24/06/2008. Issue demand notice and challan accordingly.”

From the above, it is evident that at the time of initiation of penalty proceedings in the assessment order as well as at the time of levying the penalty, AO did not specify any limb of clause (c) of section 271(1) of the Act. This manner of recording of satisfaction suggests the existence of ambiguity with reference to applicability of specific limb. There is no harmony between the initiation of penalty proceedings and at the time of levying the penalty. 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 grounds/additional grounds of appeal raised by the assessee are allowed.

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

ITA Nos. 1962 to 1965/PUN/2016**A.Yrs. 2001-02 to 2002-03 and 2004-05 to 2005-06**

10. The facts, issues, decision of AO/CIT(A) and the arguments of the parties are common. Therefore, our decision given in ITA No.1961/PUN/2016 setting aside the order of CIT(A) shall apply to these appeals too. Accordingly, the grounds/additional ground raised by the assessee in these appeals are allowed.

11. In the result, the above appeals of the assessee are allowed.

12. To sum up, all the appeals filed by 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 □ प्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-11, 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.