

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.930/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Satish Lackamichand Agarwal,
Darshan Villa, Plot No.46,
S.No.35, Raghavendra Nagar,
Near Jadhav Hospital,
Kharadi, Pune – 411014

.... अपीलार्थी/Appellant

PAN: ADMPPA0063C

Vs.

The Income Tax Officer,
Ward 3(4), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Kishore Phadke

प्रत्यर्थी की ओर से / Respondent by : Shri Achal Sharma

सुनवाई की तारीख / Date of Hearing : 25.07.2018	घोषणा की तारीख / Date of Pronouncement: 27.07.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against the order of CIT(A)-3, Pune, dated 01.01.2016 relating to assessment year 2010-11 against penalty levied under section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *The learned CIT(A)-3 erred in law and on facts in confirming penalty u/s 271(1)(c) of ITA, 1961 amounting to Rs.13,05,711/- levied by learned AO.*
2. *The learned CIT(A)-3, Pune erred on facts in not providing adequate opportunity of being heard before levying penalty u/s 271(1)(c) of ITA, 1961.*

3. The assessee though has raised two different issues but the preliminary issue raised is vide ground of appeal No.2 i.e. against non-affording of opportunity of hearing by the CIT(A).

4. We proceed to decide the said issue before going into the merits of additions made by authorities.

5. The perusal of the order of CIT(A) reflects that the appeal was fixed for hearing on different dates. The CIT(A) vide para 3.3 of the appellate order notes that notices were issued and were returned back by the Postal authorities. However, the assessee was given another notice but there was no compliance. The perusal of the appellate order and the Appeal Memo in Form No.36 reflects that there is change in address of assessee and hence, miscommunication. Since the notices were returned, no reasonable opportunity of hearing was given to the assessee.

6. We are of the view that the CIT(A) has failed to provide reasonable opportunity of hearing to the assessee in the circumstances where the assessee was prevented by sufficient cause for non-appearance on the slated dates of hearing. In the interest of justice and following the principles of natural justice, we deem it fit to restore the issue on merits, back to the file of CIT(A), who shall afford reasonable opportunity of hearing to the assessee. The assessee is also directed to appear before the CIT(A) on the date fixed for hearing and comply with same and file the submissions before the CIT(A). Thus, ground of appeal No.2 raised by the assessee is allowed for statistical

purposes. In view of our setting aside the matter back to the file of CIT(A), we are not addressing the issue on merits.

7. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced on this 27th day of July, 2018.

Sd/- (ANIL CHATURVEDI)	Sd/- (SUSHMA CHOWLA)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 27th July, 2018.
GCVSR

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

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

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