

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 No.2150/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Gulab Badgujar,
204, Pashupatinath,
C-02, B-Wing,
Mahadev Sankalp Complex,
Gandhare Village,
Near Khadakpada Chowk,
Kalyan (West), Thane – 421301
PAN : ANJPB4656R

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Central-1, Nashik

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.2151/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Yogita Badgujar,
204, Pashupatinath,
C-02, B-Wing,
Mahadev Sankalp Complex,
Gandhare Village,
Near Khadakpada Chowk,
Kalyan (West), Thane – 421301
PAN : ANKPB5184H

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Central-1, Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 24.07.2018

घोषणा की तारीख / Date of Pronouncement : 25.07.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are 2 appeals filed by the two different assesseees against the separate orders of CIT(A)-13, Pune, dated 14-06-2016 & 16-06-2016 for

the common A.Y. 2010-11. Both the assesseees raised common grounds in these appeals, therefore, these appeals are taken up for adjudication in this composite order.

We shall take up the appeal ITA No.2150/PUN/2016 filed by Shri Gulab Badgujar first.

ITA No.2150/PUN/2016 - Shri Gulab Badgujar
A.Y.2010-11

2. The solitary ground raised by the assessee reads as under :

"1. On the facts in the circumstance in the case and in the law the Ld.CIT(A)-13, Pune has erred in confirming the penalty order passed by the Ld. AO u/s.271(1)(c) of the Act levying a penalty of Rs.2,14,647/- by disregarding the appellant's contentions.

3. Briefly stated relevant facts include that the assessee is an individual and derives income from cloth business, income from salary, income from other sources and agricultural income. There was search and seizure action u/s.132 of the Act in the Suyojit Group of cases on 17-09-2010. Residential premises of Shri Anant Keshav Rajegaonkar was also searched u/s.132. During the said search certain incriminating documents belonging to the assessee were found and seized. Provisions of section 153C of the Act were invoked. Assessee filed original return of income u/s.139 of the Act showing total income of Rs.8,77,790/- and agricultural income of Rs.2,70,590/-. On verification of the capital account of the assessee, AO noticed that assessee claimed agricultural income of Rs.2,70,590/-. However, the copies of 7/12 extract show the names of his father, mother and brother and there was no agricultural land in the name of the assessee. Assessee did not submit any purchase bills, seeds, fertilizers, details of labour charges paid, sale of agricultural produce. In the absence of any supporting documents, the AO denied

the claim of agricultural income made by the assessee and made addition of Rs.25,000/- treating the same as income from other sources. AO treated the entire income returned by the assessee as concealed income and levied the penalty of Rs.2,14,647/- u/s. 271(1)(c) of the Act.

4. In the First Appellate proceedings, the CIT(A) confirmed the penalty levied by the AO. Contents of Para Nos. 2.2.7 to 2.2.11 of the order of CIT(A) are relevant.

5. Aggrieved with the confirmation of the penalty by the CIT(A), the assessee filed the present appeal before the Tribunal with the ground extracted above.

6. Before us, at the outset, Ld. Counsel for the assessee 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 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 :

*“07. The assessee has filed the return of income as a result of search action. Hence the entire income returned by the assessee u/s.153C is treated **as concealed income, the penalty proceedings u/s.274 r.w.s.271(1)(c) are separately initiated.**”*

8.1 We also perused the penalty order dated 27-08-2013 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 :

*“7. 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.8,77,790/-**. I therefore, **impose a penalty of Rs.2,14,647/-**. (Two Lac Fourteen Thousand Six Hundred Forty Seven Only) which works out @100% of tax sought to be evaded as against maximum penalty leviable at Rs.6,43,941/- which works out at 300% of tax sought to be evaded under section 271(1)(c) of the Income Tax Act, 1961.”*

From the above, it is evident that at the time of initiation of penalty proceedings in the assessment, AO mentioned one limb of clause (c) of section 271(1) of the Act and at the time of levying the penalty the AO mentioned both the limbs of the said section. 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 ground raised by the assessee is allowed.

9. In the result, appeal of the assessee is allowed on technical grounds.

ITA No.2151/PUN/2016 – Smt.Yogita Badgujar

A.Y. 2010-11

10. The solitary ground raised by the assessee reads as under :

“1. On the facts in the circumstance in the case and in the law the Ld.CIT(A)-13, Pune has erred in partly confirming the penalty order passed by the Ld. AO u/s.271(1)(c) of the Act levying a penalty of Rs.6,234/- by disregarding the appellant’s contentions.

The appellant craves for to leave, add, alter, modify, delete above ground of appeal before or at the time of hearing, in the interest of natural justice.”

11. Briefly stated relevant facts include that the assessee is an individual and is engaged in the business of reseller of clothes. He also derives income from other sources. There was search and seizure action u/s.132 of the Act in the Suyojit Group of cases on 17-09-2010. Residential premises of Shri Anant Keshav Rajegaonkar was also searched u/s.132. During the said search certain incriminating documents belonging to the assessee were found and seized. Provisions of section 153C of the Act were invoked. Assessee filed original return of income u/s.139 of the Act showing total income of Rs.10,81,936/-. Consequent to notice u/s.153C of the Act, assessee disclosed additional income of Rs.20,174/-. On verification of the Balance sheet of the assessee, AO noticed that assessee shown unsecured loan of Rs.5 lakhs from Ajay. Assessee was asked to justify the claim. Assessee failed to discharge the onus cast on him with requisite evidences. Therefore, AO made addition of Rs.5 lakhs as unexplained cash credit and initiated penalty proceedings u/s.271(1)(c) of the Act. Penalty of Rs.1,60,734/- was levied.

12. In the First Appellate proceedings, the CIT(A) deleted the penalty levied by the AO on the addition of Rs.5 lakhs. However, he sustained the penalty on the additional income of Rs.20,174/- only.

13. Aggrieved with the order of CIT(A), the assessee filed the present appeal before the Tribunal with the grounds extracted above.

14. Before us, Ld. Counsel for the assessee submitted that the arguments raised in the appeal No.2150/PUN/2016 shall hold good as the satisfaction recorded by the AO at the time of initiating/levying the penalty is not valid and unsustainable in law. Per Contra, Ld. DR relied on the order of the AO.

15. After hearing both the sides, we find in this case also, the satisfaction recorded by the AO falls short of the legal requirement of specifying the particular limb of clause (c) of section 271(1) of the Act. Therefore, we find it relevant to extract the satisfaction recorded by the AO in the assessment order as well as the penalty order and the same read as under :

Satisfaction recorded by the AO in the assessment order :

*“06. In the light of the above discussion, the assessee has failed to discharge the burden of proof legally cast upon him and his submission is not acceptable because the creditworthiness and genuineness of the lender is not proved. Accordingly, an addition of Rs.5,00,000/- is made to the total income of the assessee being unexplained cash credit. As **assessee has concealed the particulars of her income penal proceedings u/s.271(1)(c) is separately initiated.**”*

Satisfaction recorded by the AO in the penalty order :

*“08. I am satisfied that the **assessee has without any reasonable cause, furnished an inaccurate particulars of income and thereby concealed her income to the extent of Rs.5,10,174/-** which comprises of Rs.5,00,000/- and Rs.20,174/- on account of unexplained cash credit and on account of undisclosed income separately. I, therefore, impose a penalty of Rs.1,60,734/-.....”*

From the above, we find the satisfaction recorded by the AO in this appeal also falls short of legal requirement and is similar to that of the case of Shri Gulab Badgular – ITA No.2150/PUN/2016. Therefore, following similar reasoning given in the said case, we hold that the penalty order is liable to be quashed. Accordingly, we reverse the order of CIT(A) and direct the AO to delete the penalty. Thus, the ground raised by the assessee is allowed.

16. In the result, the appeal of the assessee is allowed on technical grounds.

17. In the result, the appeals filed by both the assesseees are allowed on technical grounds.

Order pronounced on 25th 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 : 25th July, 2018.
Satish

आदेश की प्रतिलिपि अग्रेषित / 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.

आदेशानुसार / BY ORDER,

// True Copy //

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