

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. 2526/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of Income Tax,
Central Circle 2(1), Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Ashray Premises Pvt. Ltd.
Office No. 3 & 4, Blue Hills
Society, Nagar Road, Yerawada,
Pune-411 006
PAN : AAACA8294P

.....प्रत्यर्थी / Respondent

Revenue by : Shri Pankaj Garg
Assessee by : Shri Vipin Gujarathi

सुनवाई की तारीख / Date of Hearing : 01.08.2018
घोषणा की तारीख / Date of Pronouncement : 21.08.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This is the appeal filed by Revenue against the order of CIT (Appeals)-12,
Pune, dated 12.08.2016 for the A.Y.2012-13.

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

"1. On the facts and the circumstances of the case, the Ld. CIT(A) was justified in allowing the appeal of the assessee on the basis of Hon'ble Gujarat High Court's decision in the case of LMP Precision Engg. Co. Ltd. which in fact is in favour of the Revenue and not in assessee's favour, without going through the entire facts of the case?"

2. On the facts and the circumstances of the case, the Ld. CIT(A) was justified in deleting the penalty levied u/s.271(1)(c) of the Act without appreciating the fact that the revised return was filed by the assessee after receipt of notice u/s.143(3) of the Act, i.e. after the case was selected for scrutiny?"

3. The order of the Ld. CIT(A) may be vacated and the Assessing Officer be restored.

4. The appellant craves leave to add, alter, amend and modify any of the above ground of appeal.”

3. Briefly stated relevant facts include that the assessee is a company engaged in the business of construction of residential and commercial projects including development of Tech Parks and real estate in and around Pune. Assessee filed the original return of income on 20.09.2012 for the assessment year declaring total income at Rs.2,66,84,675/-. During the assessment, AO assessed the total income of the assessee at Rs.3,50,84,675/-. The Assessing Officer initiated penalty u/s. 271(1)(c) of the Act in respect of interest income of Rs.84,00,000/- which was disclosed in the revised return. Thereafter, Assessing Officer levied penalty of Rs.27,72,000/- treating the amount of Rs.84,00,000/- as concealed income. In the First Appellate proceedings, the CIT(A) deleted the penalty so levied by the AO u/s. 271(1)(c) of the Act.

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

5. Before us, at the outset, Ld. Counsel for the assessee submitted orally 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. Further, he submitted

that if relief is granted on the legal issue, there is no need for adjudicating the grounds raised on the merits of the penalty.

6. Per Contra, Ld. DR for the Revenue relied heavily on the order of the AO.

7. We heard both the parties and perused the orders of the Revenue on the legal issue raised orally. Firstly, as argued by the Ld. Counsel, we would like to adjudicate the issue on the 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:

*“05. The proceedings u/s.271(1)(c) are separately initiated against the assessee **for concealment of income and furnishing inaccurate particulars of income** to the extent of Rs.84,00,000/- in the return filed u/s.139(1).”*

7.1 We also perused the penalty order dated 21.08.2015 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:

*“8. I am satisfied that the assessee has **furnished inaccurate particulars of income** and made itself liable for levy of penalty u/s.271(1)(c) of the Act, 1961. Accordingly, order u/s.271(1)(c) of the I.T.Act, 1961, levying penalty of Rs.27,72,000/- is passed.”*

From the above, it is evident that at the time of initiation of penalty proceedings in the assessment, AO mentioned both limbs of clause (c) of section 271(1) of the Act whereas at the time of levying penalty AO mentioned only one limb. 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. Therefore, we are of the view, that the assessee is entitled to relief on the legal issue. Accordingly, we hold that the grounds of appeal on the merits are dismissed as academic.

8. In the result, appeal of the Revenue is dismissed on technicalities.

Order pronounced 21st day of August, 2018.

Sd/-

Sd/-

(विकास अवस्थी /VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

(डी. करुणाकरा राव/D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 21st August, 2018.

Satish

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.