

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" 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. 1587 to 1592/PUN/2016
निर्धारण वर्ष / Assessment Years : 1999-2000 to 2004-05

Mrs. Pushpa D. Patil,
Priti Pratik Ayodhya Nagari,
Dhebiwadi Road,
Agashivnagar, Karad,
Dist. Satara
PAN : ACLPP4779Q

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-1, Satara

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K.Kulkarni
Revenue by : Shri Sanjeev Ghei

सुनवाई की तारीख / Date of Hearing : 21.08.2018
घोषणा की तारीख / Date of Pronouncement : 24.08.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are six appeals filed by the assessee involving A.Yrs. 1999-2000 to 2004-05. These appeals are filed against separate orders of CIT(A)-2, Pune, commonly dated 15-03-2016. Penalty levied u/s.271(1)(c) of the Act is the only issue in all these appeals. Grounds raised by the assessee are also identical.

2. We shall first take up the appeal the assessee for A.Y. 1999-2000 for the sake of reference to facts.

ITA No.1587/PUN/2016
A.Y. 1999-2000

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

1. *That the Ld. ITO has erred in levying the penalty of Rs.1,35,586/- in the assessment order passed for A.Y. 1999-2000 ignoring the submissions made during the course of hearing.*
2. *That the Ld. ITO has erred in making the addition of Rs.4,03,762/- on account of loan taken from Sou. Laxmi Pawar, increase in capital balance, recurring deposits owned by D.B. Patil (HUF), unexplained credit in bank account, and drawings without any authenticate/bonafide ground. The AO has not given sufficient time for submitting all the documents/supporting for the assessment. Therefore the assessment order passed by the CIT(A) is not justified and therefore the same is not tenable.*
3. *Looking to the facts and circumstances of the case, the huge penalty of Rs.1,35,586/- levied on the income by the ITO may please be waived.*
4. *The appellant prays to be allowed to add, amend, delete, modify, and rectify any grounds of appeal during the course of hearing.*

4. Briefly stated relevant facts include that the assessee is an individual. In this case, initially, the assessee has not filed the return of income. In response to notice u/s.148 of the Act, the assessee filed the return of income declaring total income of Rs.1,33,833/- and agricultural income at Rs.23,000/-. During the year under consideration, the assessee was running a STD booth and earning income from therein besides rental income from house property, salary from Ayodhya Leasing and Finance Co. Ltd. and income from other sources. Based on the information gathered by the ADIT (Investigation), Kolhapur, it was noticed that assessee made investments during the period A.Y. 1998-99 to 2003-04 totalling to Rs.68,34,747/-. An amount of Rs.17,67,470/- was stated to have been invested out of loans taken from various banks including LIC. Balance amount of Rs.50,67,177/- was treated by him as assessee's unexplained investment/unaccounted income. The said income was admitted by the

husband of the assessee Shri Daulat B. Patil. Assessee submitted Balance sheet and Capital accounts for the block period mentioned above. At the end of the assessment u/s.143(3) r.w.s. 147 of the Act, AO made various additions totaling to Rs.4,28,182/- and determined the total income of the assessee at Rs.5,65,015/-. AO also initiated penalty proceedings u/s.271(1)(c) of the Act for filing inaccurate particulars of income and levied penalty of Rs.1,35,586/-. In the First Appellate proceedings, the CIT(A) confirmed the penalty u/s.271(1)(c) of the Act to the extent of 100% of tax sought to be evaded instead of 200% penalty levied by the AO.

In the rest of the assessment years too, AO adopted the same manner in matters of levying the penalties u/s.271(1)(c) of the Act.

5. Aggrieved with the order of CIT(A), the assessee filed the present appeals before the Tribunal with the similar grounds extracted above.

6. Before us, at the outset, raising a legal issue, Ld. Counsel for the assessee submitted orally that this is a case where the AO failed to record valid satisfaction in the assessment orders 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 orders as well as the penalty orders 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.

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

8. 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. On perusal of the assessment order dated 29-12-2006, we find the AO made various additions invoking the provisions of section 68, 69 and 69B etc. While making each of these additions, AO initiated the penalty proceedings stating that this is a case of **“furnishing of inaccurate particulars of income”**. Further, we have perused the penalty order dated 19-06-2007 and find the AO levied the penalty for default of furnishing of inaccurate particulars as well as concealment of income. For the sake of completeness, we proceed the extract the contents of Para No.5 and the same reads as under :

“5.....

*.....I am therefore, satisfied that this is a fit case for imposing penalty under sec.271(1)(c) of the I.T. Act, 1961. In this case, since the assessee has been reluctant to make any proper reply as to why penalty under sec.271(1)(c) in her case should not be imposed **due to concealment of income** and assets but also non cooperated with the Department by furnishing proper explanation. Rather, the assessee made false allegations against the Assessing Officer and though tried to dilute and dilate the main issues relating to evasion of tax, thereby making baseless allegation and resorting to illegal action, not in accordance with the provisions of the Income Tax Act. I, accordingly consider it to be a fit case for imposing penalty under sec.271(1)(c) of the Income Tax Act, 1961, of Rs.2,49,360/- being 200% of the tax sought to be evaded on the **concealed income**, calculated as under*”

Although the AO initiated the penalty proceedings for default of furnishing of inaccurate particulars, eventually in para No.5, the AO levied

the penalty for concealment of income. It is also evident that AO levied the penalty for each of the addition for **“furnishing of inaccurate particulars of income”**.

Therefore, 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 did not mention any limb while levying the penalty. 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.

9. There is no change in the material facts and the decision of AO/CIT(A) in the remaining assessment years too. Therefore, with the similar reasoning, we allow all the appeals of the assessee on the legal issue alone and dismiss the grounds on merits.

10. In the result, all the appeals of the assessee are partly allowed.

Order pronounced on 24th day of August, 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 : 24th 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)-2, Pune.
4. The Pr. CIT, Central-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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