

आयकर अपीलीय 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.1654/PUN/2015**

**निर्धारण वर्ष / Assessment Year : 2006-07**

Bajaj Allianz General Insurance Company Ltd.  
1<sup>st</sup> Floor, GE Plaza,  
Airport Road, Yerawada,  
Pune – 411006

.... अपीलार्थी/Appellant

PAN: AABCB5730G

Vs.

The Dy. Commissioner of Income Tax,  
Circle 1(1), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : S/Shri P.J. Pardiwala,  
Nikhil Mutha and Rajat Soni  
प्रत्यर्थी की ओर से / Respondent by : Shri Rajeev Kumar, CIT

सुनवाई की तारीख / <b>Date of Hearing : 26.09.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 28.09.2018</b>
--	--

**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by assessee is against order of CIT(A)-1, Pune, dated 03.09.2015 relating to assessment year 2006-07 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 ground of appeal:-

**Ground No 1: Levy of penalty of Rs.30,43,429 on disallowance of risk inspection charges**

1.1 Erred in upholding the action of the Assessing Officer ('AO') in levying penalty of Rs.30,43,429 in respect of disallowance of risk inspection charges.

3. The only issue raised in the present appeal is against initiation of penalty proceedings under section 271(1)(c) of the Act.

4. Briefly, in the facts of the case, original assessment was completed under section 143(3) r.w.s. 144C of the Act vide order dated 30.11.2010. The Assessing Officer disallowed bogus expenditure of ₹ 90,41,680/- and vide para 9.13 at page 60 of assessment order and held the assessee to have filed inaccurate particulars of income, for which separate penalty proceedings under section 271(1)(c) of the Act were being initiated. In the penalty order passed under section 271(1)(c) of the Act, dated 30.01.2014 in respect of said disallowance made of ₹ 90,41,680/-, the Assessing Officer observed that *However, the finding given by the AO on bogus expenditures are elaborate and which proves that assessee has concealed the particulars of the income and also filed inaccurate particulars of his income.* The Assessing Officer then holds the assessee liable for penalty for furnishing inaccurate particulars of income within meaning of section 271(1)(c) read with Explanation-1 of the Act.

5. The CIT(A) has upheld the said levy of penalty, against which the assessee is in appeal.

6. The learned Authorized Representative for the assessee has furnished additional ground of appeal before us, which reads as under:-

**Ground 2: Validity of notice issued for initiation of penalty under section 271(1)(c)**

2.1 Without prejudice to the Ground 1, the Appellant submits that the penalty order passed under section 271(1)(c) of the Act is null and void, since referring to the notice under section 274 read with section 271(1)(c) there exists vagueness, ambiguity and non-application of mind by the then learned AO that vitiates the validity of the penalty order.

7. The assessee has raised additional ground of appeal before us alleging that penalty order passed in the case is vague, ambiguous and without application of mind by Assessing Officer. The additional ground of appeal being jurisdictional issue, is admitted for adjudication.

8. The learned Authorized Representative for the assessee after taking us through the assessment order referring to findings of Assessing Officer in paras 7.2 and 7.4 of penalty order, pointed out that though the Assessing Officer mentions that penalty is being levied for inaccurate particulars of income but further goes on to say that it is levied under section 271(1)(c) read with Explanation-1 of the Act, which covers cases of only concealment of income. He then, pointed out that penalty order passed in the case on one disallowance of bogus expenditure on both the limbs of section 271(1)(c) of the Act, suffers from infirmity.

9. The learned Departmental Representative for the Revenue on the other hand, took us through Explanation-1 of section 271(1)(c) of the Act and pointed out that Assessing Officer has levied penalty for inaccurate particulars of income as it is apparent from the penalty order.

10. We have heard the rival contentions and perused the record. Penalty proceedings are to be initiated for non satisfaction of one of the two limbs of

section 271(1)(c) of the Act. The requirement of law is that the assessee is to be show caused as to which limb of section 271(1)(c) of the Act has not been fulfilled. Thereafter, while levying penalty it is incumbent upon the Assessing Officer to levy penalty for concealment on the limb for which it was initiated. The Assessing Officer has to give a finding in this regard.

11. The Hon'ble Bombay High Court in CIT Vs. Shri Samson Perinchery in Income Tax Appeal No.1154 of 2014 with other Income Tax Appeals Nos.953 of 2014, 1097 of 2014 and 1226 of 2014, judgment dated 05.01.2017 have laid down the proposition with regard to initiation of penalty proceedings on one limb of section 271(1)(c) of the Act and levy on another limb and observed that show cause notice needs to be given to the assessee as to which limb of section has not been fulfilled by it and which makes the assessee liable for penalty for concealment and then can levy penalty on the said limb.

12. Now, coming to the facts of the present case, the Assessing Officer while making addition in assessment order had initiated penalty for furnishing inaccurate particulars of income and the said satisfaction so recorded is thus within framework of law. Now, coming to penalty order passed by the Assessing Officer. The perusal of para 7.2 of penalty order, the first part is the language of Explanation-1, which deals with case of concealment of income. The Assessing Officer further in para 7.2 itself observed that the findings given by Assessing Officer on bogus expenditure were elaborate and proves that the assessee has concealed particulars of income and also filed inaccurate particulars of income. The Assessing Officer further in para 7.4 holds the assessee to have furnished inaccurate particulars of income within meaning of section 271(1)(c) read with Explanation-1 of the Act. As pointed out,

Explanation-1 of section 271(1)(c) of the Act deals with concealment of income and the Assessing Officer thus, in the present case has held the assessee to have furnished inaccurate particulars of income and also concealed its income. Such an order levying penalty under section 271(1)(c) of the Act on both the limbs of section 271(1)(c) of the Act do not stand and the same is held to be invalid and accordingly, penalty levied under section 271(1)(c) of the Act is deleted. The additional ground of appeal raised by assessee is thus, allowed. We are not addressing the issue on merits.

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

Order pronounced on this 28<sup>th</sup> day of September, 2018.

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

पुणे / Pune; दिनांक Dated : 28<sup>th</sup> September, 2018.

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Pune;
4. The Pr.CIT-I, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

त्यापित प्रति //True Copy//

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