

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 Nos.1842 to 1844/PUN/2016
निर्धारण वर्ष / Assessment Years : 2001-02 to 2003-04

Ali Akbar Jafari,
Akbar Radiant Plaza,
2nd Floor, Above ABN Amro Bank,
321, M.G. Road,
Pune – 411001

.... अपीलार्थी/Appellant

PAN: AASPJ7119F

Vs.

The Asst. Commissioner of Income Tax,
Circle 4, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Nikhil Pathak
प्रत्यर्थी की ओर से / Respondent by : Shri Rajesh Gawli

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| सुनवाई की तारीख / Date of Hearing : 26.09.2018 | घोषणा की तारीख / Date of Pronouncement: 28.09.2018 |
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This bunch of three appeals filed by assessee are against consolidated order of CIT(A), Pune-5, Pune, dated 29.06.2016 relating to assessment years 2001-02 to 2003-04 against penalty levied under section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of appeals relating to same assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The only issue raised in the bunch of appeals is against levy of penalty under section 271(1)(c) of the Act for non-recording of proper satisfaction by the Assessing Officer in assessment order. We make reference to the facts and issues in ITA No.1842/PUN/2016, relating to assessment year 2001-02 to adjudicate the issues.

4. The assessee has raised additional ground of appeal in this regard which is purely legal and hence, admitted for adjudication. The additional ground of appeal reads as under:-

1] *The assessee submits that no proper satisfaction was recorded by the learned A.O. in the asst. order and hence, the penalty order passed u/s 271(1)(c) is bad in law and the penalty levied may kindly be deleted.*

5. Briefly, in the facts of the case, search under section 132 of the Act was conducted at the premises of assessee on 21.09.2006. Consequent thereto, proceedings under section 153A of the Act were initiated against the assessee. In the assessment order passed under section 143(3) r.w.s. 153A of the Act, the Assessing Officer denied depreciation on cars owned by assessee. The CIT(A) has allowed the claim of assessee to the extent of 50%. The Assessing Officer while completing assessment relating to aforesaid disallowance in para 8 has initiated penalty proceedings for concealing the particulars of income and furnishing inaccurate particulars of income. Another addition made was on account of proportionate disallowance of interest for the respective years i.e. assessment years 2001-02 to 2003-04. The Assessing Officer in para 4.4 also initiated penalty proceedings for concealing particulars of income and furnishing

of inaccurate particulars of such income. Further, in the order passed under section 271(1)(c) of the Act, the Assessing Officer holds the assessee to have furnished inaccurate particulars of income and imposed penalty of ₹ 3,18,780/- in assessment year 2001-02, ₹ 2,94,720/- in assessment year 2002-03 and ₹ 2,04,948/- in assessment year 2003-04.

6. It may be pointed out herein that in assessment years 2002-03 and 2003-04, the basis for levy of penalty is the disallowance of proportionate interest claimed by assessee. The Assessing Officer has passed composite order for all the years and after making the disallowance, has initiated penalty proceedings for both the limbs.

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

8. Shri Nikhil Pathak, the learned Authorized Representative appeared on behalf of assessee and Shri Rajesh Gawli, the learned Departmental Representative appeared for the Revenue.

9. We have heard the rival contentions and perused the record. The limited issue raised by the assessee before us by way of additional ground of appeal is that in the absence of recording of proper satisfaction while initiating penalty proceedings under section 271(1)(c) of the Act, penalty order passed by the Assessing Officer was not sustainable. The additional ground of appeal being legal in nature, is admitted and being adjudicated. The assessee is aggrieved by non-recording of satisfaction by the Assessing Officer. The perusal of assessment order reflects that in assessment year 2001-02, two disallowances are made in the hands of assessee i.e. on account of

depreciation on cars and proportionate disallowance of interest. After making the aforesaid disallowances, the Assessing Officer has recorded satisfaction that the assessee has concealed income and also furnished inaccurate particulars of income and initiated penalty proceedings.

10. Penalty under section 271(1)(c) of the Act can be levied where the assessee has failed to fulfill either of two limbs of section 271(1)(c) of the Act. In this regard, proper satisfaction needs to be recorded by the Assessing Officer while initiating penalty proceedings in assessment order. In the absence of such recording of satisfaction, penalty proceedings initiated cannot be upheld and consequent order passed by Assessing Officer does not stand.

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. Applying the said principle laid down by the Hon'ble Bombay High Court in CIT Vs. Shri Samson Perinchery (supra), we hold that it was incumbent upon the Assessing Officer to come to a finding as to which limb of section 271(1)(c) of the Act has not been fulfilled by the assessee. In the absence of the same, satisfaction recorded by Assessing Officer for initiating penalty proceedings is faulted with and consequent order passed by Assessing Officer levying penalty on one of the limbs of said section cannot stand. Accordingly, we hold so. Thus, penalty levied under section 271(1)(c) of the Act is deleted on this jurisdictional issue

itself. We are not addressing the issue on merits. The additional ground of appeal raised by assessee is thus, allowed.

12. The facts and issues in ITA Nos.1843/PUN/2016 and 1844/PUN/2016 are identical to the facts and issues in ITA No.1842/PUN/2016 and our decision in ITA No.1842/PUN/2016 shall apply *mutatis mutandis* to ITA Nos.1843/PUN/2016 and 1844/PUN/2016.

13. In the result, all the appeals of assessee are allowed.

Order pronounced on this 28th day of September, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 28th September, 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), Pune-5, Pune;
4. The Pr.CIT, Pune-4, 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