

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 Nos. 2832 to 2836/PUN/2016

निर्धारण वर्ष / Assessment Years: 2006-07 to 2010-11

Shri Nandu A. Rajput,
S. No. 125, Arjun Hights,
Near Warje Jakat Naka,
Warje, Pune-411 052
PAN : AAPPR5684Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Central Circle- 2(3), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : None

Revenue by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 24.09.2018

घोषणा की तारीख / Date of Pronouncement : 28.09.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM

In this bunch of appeals filed by the assessee for the assessment years 2006-07 to 2010-11, the assessee has assailed the order of Commissioner of Income Tax (Appeals)-12, Pune dated 06.10.2016 common for the impugned assessment years in confirming levy of penalty u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. Since, the additions on which penalty u/s.271(1)(c) is levied and the reasons for levy of penalty in all these appeals are similar, these appeals are taken up together for adjudication and are disposed of vide this common order.

3. The notice of appeals was sent to the assessee through RPAD on 01.08.2018. The acknowledgement of the notice available on record indicates that the notice of the appeals has been duly served on the assessee. Despite service of notice, none has appeared on behalf of the assessee to pursue the appeals nor any request seeking adjournment has been received from assessee/appellant. In such circumstances, we proceed to decide these appeals in the absence of assessee or his AR with the assistance of ld. DR and the material available on record.

4. The brief facts of the case as emanating from records are: A search action u/s. 132 of the Act was conducted in the case of Nandu Rajput group on 12.10.2010. Notice u/s.153A was issued to the assessee for the impugned assessment years. In response to the said notice, the assessee filed separate return of income for the impugned assessment years. The Assessing Officer in assessment proceedings u/s.143(3) r.w.s.153A of the Act made additions/disallowances on following counts :

<i>Addition/ disallowances</i>	<i>Assessment year</i>				
	<i>2006-07</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>
<i>Receipts of 'on money'</i>	✓	✓	✓	✓	✓
<i>Investment in Bungalow</i>	✓	✓	✓	✓	✓

<i>Disallowance u/s.40(3)</i>	✓	–	✓	–	✓
<i>Under valuation of work in progress</i>	–	–	–	✓	–
<i>Re-casting of profit</i>	–	–	–	–	✓

4.1 In assessment year 2006-07, Assessing Officer while making addition in respect of 'On money' and investment in farmhouse/bungalow at Khanapur initiated penalty proceedings u/s. 271(1)(c) of the Act. However, no satisfaction was recorded for initiating penalty proceedings in respect of disallowance u/s. 40A(3) of the Act.

4.2 In assessment year 2007-08, while making additions in respect of 'On money' and investment in farmhouse/bungalow at Khanapur, Assessing Officer initiated penalty proceedings u/s. 271(1)(c) on both the counts.

4.3 In assessment year 2008-09, the position is similar to assessment year 2006-07 and penalty proceedings were initiated in respect of receipt of 'on money' and investment in farmhouse/bungalow at Khanapur.

4.4 In assessment year 2009-10, the addition was made on account of receipt of 'On money', investment in farmhouse/bungalow at Khanapur and under valuation of work in progress. The Assessing Officer initiated penalty proceedings in respect of all the three additions.

4.5 In assessment year 2010-11, the addition was made on account of receipt of 'On money', investment in farmhouse/bungalow at Khanapur,

disallowance u/s.40A(3) and recasting of profits. The Assessing Officer initiated penalty proceedings u/s.271(1)(c) in respect of all additions except disallowance u/s.40A(3) of the Act.

The Assessing Officer levied penalty u/s.271(1)(c) of the Act in respect of the additions for which satisfaction was recorded. Penalty order for respective assessment years are of even date i.e. 27.03.2015.

5. Aggrieved by the order levying penalty, assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide common order for assessment years 2006-07 to 2010-11 confirmed the levy of penalty on all the additions except investment in bungalow at Khanapur in assessment year 2006-07.

6. Aggrieved by the order of Commissioner of Income Tax (Appeals) in confirming the levy of penalty, the assessee is in second appeal before the Tribunal.

7. Shri M.K. Verma representing the Department vehemently supported the impugned order and prayed for dismissing the appeals of the assessee. The ld. DR submitted that but for search and seizure action, assessee would not have disclosed this income. Therefore, penalty u/s.271(1)(c) has been rightly levied by the Assessing Officer and confirmed by the Commissioner of Income Tax (Appeals).

8. We have heard the submissions made by the ld. DR and have perused the orders of Authorities below. The facts narrated in the foregoing paragraphs are not disputed.

ITA No. 2832/PUN/2016**Assessment year 2006-07**

9. For the sake of convenience, we will first take the appeal of the assessee for assessment year 2006-07. In assessment year 2006-07, the Assessing Officer has recorded satisfaction for levy of penalty u/s. 271(1)(c) in respect of two additions i.e. (i) 'receipt of on money' on sale of flats/shops; and (ii) investment in farm-house/bungalow at Khanapur. We observe that while recording satisfaction in respect of both the additions, the Assessing Officer has mentioned both the limbs of section 271(1)(c) of the Act i.e. 'concealment of income' and 'furnishing of inaccurate particulars of income'. The relevant extract of the satisfaction recorded by the Assessing Officer while making assessment is reproduced here in below:

- Satisfaction in respect of addition on account of 'On Money' recorded at the end of para 3 of Assessment Order.

"Since the above additional income offered to tax by the assessee only after the search action in his case, penalty proceeding u/s.271(1)(c) of the I.T Act, are being separately initiated in this case for concealing the income and for furnishing inaccurate particulars of income."

- Satisfaction in respect of addition on account of undisclosed investment in bungalow/ farm house at Khanapur.

"4.1.8.....Further, considering the above facts of the case, penalty proceedings u/s. 271(1)(c) of the I.T. Act are being separately initiated in this case for furnishing inaccurate particulars of income and concealing the income."

The manner in which satisfaction has been recorded by the Assessing Officer in respect of both the additions clearly indicates

ambiguity in the mind of Assessing Officer qua the exact charge for levying penalty u/s. 271(1)(c) of the Act.

10. The ambiguity in the mind of Assessing Officer continues even at the time of levy of penalty. The Assessing Officer while passing order levying penalty u/s. 271(1)(c) of the Act records that penalty is being levied for concealing the income by furnishing inaccurate particulars of income. The relevant para of the penalty order dated 27.03.2015 reads as under:

“11. Hence in view of the above discussion it is hereby held the assessee has tried to conceal the income by furnishing inaccurate particulars of income and is thus liable for penalty u/s.271(1)(c) of the I.T. Act, 1961 and hence it is a fit case for levy of penalty u/s. 271(1)(c).”

A perusal of the penalty order reveals vagueness with respect to charge for levying penalty u/s.271(1)(c) of the Act is perpetual. The Hon'ble Bombay High Court in the case of CIT Vs. Samson Perinchery reported as 392 ITR 04 and the Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton & Ginning Factory, reported as 359 ITR 565 (Kar) has held that concealment of income and furnishing of inaccurate particulars of income are two different expressions carrying different connotations. Recording of satisfaction for levy of penalty u/s. 271(1)(c) on one charge and levy of penalty on another charge would make the penalty order unsustainable in the eye of law. Similarly, recording of satisfaction citing both charges and levy of penalty on one of the charges and vice-versa would also vitiate penalty proceedings. Where the satisfaction for levy of penalty u/s.271(1)(c) is recorded by citing both the charges of section in a mechanical manner and the penalty is also levied in a casual manner by referring to both the charges of section 271(1)(c),

such an order levying penalty is not legally sustainable. The Tribunal has been consistently taking a view that penalty order is vitiated where satisfaction has been recorded by the Assessing Officer for levying penalty u/s.271(1)(c) by mentioning both the limbs of section 271(1)(c) of the Act. Thus, in view of the facts of the case, we are of considered view that penalty levied u/s.271(1)(c) of the Act in assessment year 2006-07 falls short of the legal requirement as envisaged under the provisions of section 271(1)(c) of the Act and various legal pronouncements. Accordingly, penalty order is set aside and subsequent proceedings arising there from are quashed.

11. In the result, appeal of the assessee in ITA No.2832/PUN/2016 for assessment year 2006-07 is allowed.

ITA Nos. 2833 to 2836/PUN/2016
Assessment Years 2007-08 to 2010-11

12. The facts in the assessment years 2007-08 to 2010-11 are identical to the facts in assessment year 2006-07. In assessment years 2007-08 to 2010-11, additions are made for similar reasons. In assessment years 2009-10 and 2010-11, some more additions have been made. However, the satisfaction recorded by the Assessing Officer in respect of all the additions is on similar lines and hence, suffers from ambiguity. Orders levying penalty are also worded in identical manner perpetuating ambiguity. Therefore, findings given by us in assessment year 2006-07 would *mutatis-mutandis* apply to assessment years 2007-08 to 2010-11. Accordingly, order levying penalty for the respective assessment years are

set aside and appeals of the assessee for all the assessment years i.e. 2007-08 to 2010-11 are allowed.

13. To sum up, ITA Nos. 2832 to 2836/PUN/2016 for assessment years 2006-07 to 2010-11, respectively are allowed.

Order pronounced on Friday, the 28th day of September, 2018.

Sd/-	Sd/-
(डॉ. करुणाकरा राव/D. KARUNAKARA RAO)	(विकास अवस्थी /VIKAS AWASTHY)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28th September, 2018

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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.

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आदेशानुसार / BY ORDER,

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