

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. 781/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2008-09

Shri Popatlal Mohanlal Chordia  
10, Ahinsa Nagar, Jalana Road,  
Aurangabad-431 001  
PAN : AAHPC1004H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,  
Circle-2, Aurangabad

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Ganoo  
Revenue by : Shri Sudhendu Das

सुनवाई की तारीख / Date of Hearing : 12.09.2018  
घोषणा की तारीख / Date of Pronouncement : 26.09.2018

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM:**

This is the appeal filed by assessee against the order of CIT(A)-2, Aurangabad, dated 15.03.2016 for the A.Y. 2008-09.

2. Briefly stated relevant facts include that the assessee is an individual and engaged in the business of civil construction. Assessee filed the return of income on 30.09.2008 declaring total income of Rs.46,53,921/-. During the course of assessment proceedings, Assessing Officer assessed total income of assessee at Rs.1,32,70,263/- and made the following additions :

<i>Total income as per return of income</i>	<i>Rs.46,53,919/-</i>
<i>Add : 1. As per Para No.3</i>	<i>Rs.6,08,322/-</i>
<i>2. As per Para No.4</i>	<i>Rs.1,08,189/-</i>
<i>3. As per Para No.5</i>	<i>Rs.1,50,000/-</i>
<i>4. As per Para No.6.1</i>	<i>Rs.15,97,820/-</i>

5. As per Para No.7	Rs.20,03,820/-
6. As per Para No.8.4	Rs.27,20,215/-
7. As per Para No.8.5	Rs.13,63,533/-
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	Rs.86,16,344/
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Total Income	Rs.1,32,70,263/-
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The Assessing Officer initiated penalty proceedings separately u/s.271(1)(c) of the Act for furnishing inaccurate particulars of income and levied penalty of Rs.8,21,508/-.

3. In the First Appellate proceedings, in connection with the additions @ Sl.No.4,6 & 7 above, the assessee challenged the penalty levied by the AO on account of capital gains amounting to Rs.56,63,568/-. The break-up is given as under :

Sr.No.	Heads of addition	Amount in Rs.
1	Capital gains according to section 50C	15,97,820
2	Capital gains not offered for taxation	27,20,215/-
3	Capital gains not offered for taxation	13,63,533
	Total	56,63,568

The CIT(A) after elaborately discussing the issue of capital gains and considering various judgmental laws partly allowed the appeal of the assessee. The penalty levied in respect of addition of Rs.13,63,533/- is fully confirmed and the penalty levied in respect of addition of Rs.6,64,015/- out of Rs.15,97,820/- is also confirmed. Contents of Para No.28 are relevant and therefore we proceed to extract the same below :

*“28. The penalty provision is to provide remedy for loss of revenue for which the element of “willful” concealment is not essential. This is a case where the **assessee had concealed the particulars of income** by not offering the same to tax in the A.Y. 2008-09 and had instead offered the same for taxation in the subsequent year. It is inconceivable that the assessee did not know that he had sold the lands during the financial year relevant to the A.Y. 2008-09. By not including the amount of capital gains in his return of income, the assessee had committed the default of concealment of income. Hence I hold that **penalty for concealment** has been rightly levied in respect of the transactions resulting in capital gains of Rs.6,64,015/- and Rs.13,63,533/-. **Therefore, the assessing officer is directed to delete the penalty in***

**respect of difference in valuation resulting in addition of Rs.15,97,820/- and the penalty levied in respect of Rs.6,64,015/- and Rs.13,63,533/- is confirmed.**

4. Aggrieved with the order of CIT(A), the assessee filed the present appeal raising the following grounds :

*“1. In the facts and circumstances of the case and in law, the learned CIT[A] has grossly erred in **confirming the penalty** levied by the learned Assessing Officer u/s.271[1][c] of the I.T. Act 1961 on **Capital Gains of Rs.13,63,533.00** arising on transfer of agriculture land at Gat No.142 at Teesgaon, Aurangabad. The impugned order passed by the learned CIT[A] is bad in law, arbitrary, perverse and devoid of merits and hence the impugned penalty confirmed by learned CIT[A] may please be deleted.*

*2. The appellant craves leave to add, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.”*

5. Before us, at the outset, Ld. Counsel for the assessee raising the oral ground relating to recording of satisfaction by the AO submitted 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.

6. Per Contra, Ld. DR for the Revenue relied on the orders of AO/CIT(A).

7. We heard both the parties and perused the orders of the Revenue. Before proceeding to adjudicate the solitary issue raised by the assessee, we proceed to admit the oral ground (legal in nature) raised by the assessee

regarding the recording of proper satisfaction by the AO. In this connection, we perused the assessment order dated 28-12-2010 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 :

*“Assessed u/s.143(3) of the Income Tax Act, 1961. Charge Interest u/s.234B, 234D, 244A, as per Act. Issue penalty show cause notice u/s.271(1)(c) of the Act for **furnishing inaccurate particulars of income.**”*

7.1 In Para Nos. 8.4 and 8.5 of his order, the AO while making additions on account of capital gains recorded the following satisfaction :

*“8.4 I therefore add Rs.27,20,215/- being capital gains on sale of land at Gat No.142 at Tisgaon, Dist. Aurangabad. As **assessee has concealed the capital gain** and not offered for taxation during the year. Hence penalty proceeding u/s.271(1)(c) is separately initiated.*

8.5 .....

.....

*I therefore add Rs.13,63,533/- being capital gain on sale of land at Gat No.142 at Tisgaon, Dist. Aurangabad. As **assessee has concealed the capital gain** and not offered for taxation during the year. Hence penalty proceeding u/s.271(1)(c) is separately initiated.*

7.2 We also perused the penalty order dated 28.03.2013 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. In view of the facts mentioned above, I am satisfied that the **assessee has furnished inaccurate particulars of his income from capital gain and has concealed his income to the tune of Rs.36,25,368/-** as shown above and thereby made himself liable for levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961. I, therefore, levy a penalty u/s. 271(1)(c) of the Income Tax Act, 1961 of Rs.8,21,508/- which is @100% of tax sought to be evaded, as per calculations .....*”

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. 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. It is a settled legal proposition that the AO is under obligation to specify the correct limb at the time of initiation as well as at the time of levy of penalty. In view of the above deliberation on this issue, without going into the merits of the penalty, we are of the opinion that the penalty order is liable to be quashed on this legal issue. Thus, the order of CIT(A) is set-aside and direct the AO to delete the penalty on technical grounds without going into merits of the case.

8. In the result, appeal of the assessee is allowed on technicalities.

Order pronounced on 26<sup>th</sup> day of September, 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 : 26<sup>th</sup> September, 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, Aurangabad
4. The Pr. CIT-2, Aurangabad.
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.