

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.3087/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2008-09

M/s. Shivaji Yashwant Karpe,  
Pasaydan, Jayprakash Road,  
Rangaralli, Sangamner,  
Ahmednagar – 422 605  
PAN : ABIPK4400B

.....अपीलार्थी/Appellant

Vs.

ITO, Ward-4,  
Ahmednagar

.....प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingte  
प्रत्यर्थी की ओर से / Respondent by : Shri M.K. Verma

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| सुनवाई की तारीख /<br>Date of Hearing : 27.09.2018 | घोषणा की तारीख /<br>Date of Pronouncement: 03.10.2018 |
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**आदेश / ORDER**

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

This appeal is filed by the Assessee against the order of CIT(A)-2, Pune, dated 11-08-2017 for the Assessment Year 2008-09.

2. **Condonation of Delay :** There is delay of 78 days in filing this appeal before the Tribunal. In this connection, Ld. Counsel for the assessee drew our attention to the affidavit given by the assessee dated 26-12-2017 and demonstrated the delay. The contents of the affidavit read as under :

*"This order was delivered to my consultant for further action of filing an appeal, however, due to heavy pressure of statutory obligation in the month of October and November, 2017, he could not file the appeal documents in time, which has resulted into the delay in filing the appeal before the Hon'ble Tribunal*

*Due to this reason there is a delay of approximate 78 days.*

*With this affidavit I most humbly pray before your honours to condone the delay and admit the appeal.”*

3. After hearing the Ld. Counsel for the assessee and perusing the contents of the affidavit, we are of the opinion that there was a reasonable cause for the assessee to file the appeal before the ITAT with delay of 78 days. The lapse on the Tax Consultant should not make the assessee helpless. Therefore, we condone the delay and admit the appeal for adjudication.

**Penalty – Limbs related issue**

4. Briefly stated relevant facts of the assessee include that the assessee is engaged in Medical profession and also derives income from Agriculture. During the impugned assessment year, assessee filed the return of income declaring total income of Rs.1,20,000/-. As per the AIR information, AO came to know that the assessee is maintaining Savings Bank account with Dena Bank, Sangamner and the same was not disclosed in the return of income. In the assessment proceedings u/s.143(3) of the Act, AO made of addition of Rs.19,82,640/- on account of unexplained cash deposits made in Dena Bank, Sangamner and rejected the explanation of the assessee that the said deposits pertain to the Agricultural income of the HUF. Penalty proceedings u/s.271(1)(c) r.w.s. 274 of the I.T. Act are also initiated on the assessee for concealing the particulars of income and eventually levied penalty of Rs.6,03,143/-. The CIT(A), in the quantum proceedings, confirmed the addition made by the AO. Aggrieved with said order of CIT(A), the assessee preferred an appeal before the Tribunal and the Tribunal vide its order dated 12-08-2016 dismissed the appeal of the assessee.

5. Against the penalty proceedings u/s.271(1)(c) of the Act also, the assessee filed an appeal before the CIT(A). The CIT(A) relying on the judgment of Allahabad High Court in the case of Shanti Swarup Bhatnagar Vs. CIT 279 ITR 451 as well as the judgment of Hon'ble Madras High Court in the case of K.Pillai Vs. CIT 108 ITR 612 confirmed the penalty levied by the AO by holding as under :

*“4.5 In the light of aforesaid facts of the case and decisions cited, it is held that the appellant is liable for **concealing the particulars of income** with regard to cash deposits of Rs.19,82,640/ in the undisclosed bank account maintained with Dena Bank. The addition made by the AO was confirmed by CIT(A) as well as by the ITAT, Pune Bench. **I therefore uphold the order of the AO in levying penalty u/s.271(1)(c) at Rs.6,03,143/-.**”*

6. Now the assessee filed the appeal challenging the penalty levied by the AO and upheld by the CIT(A) with the following solitary ground :

*“1. On the facts and in the circumstances of the case and in law the Lower authorities have erred in levying the penalty u/s.271(1)(c) a sum of Rs.6,03,143/- by rejecting appellants contention in this regard.”*

7. At the outset, in the proceedings before us, 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 as well as during the penalty proceedings. 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.

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

9. 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 09-12-2010 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 :

*“.....Issue show cause notice u/s.271(1)(c) r.w.s. 274 of the I.T. Act, 1961 for **concealing the particulars of income** of Rs.19,86,561/- and agriculture income of Rs.30,000/-.....”*

9.1 We also perused the penalty order dated 30-03-2016 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. ....  
..... I am therefore satisfied the inaccurate particulars of cash deposited in bank account. Assessee **furnished inaccurate particulars of income and thereby concealed the income** of Rs.19,82,640/-, being undisclosed cash deposit.”*

From the above, it is evident that at the time of initiation of penalty proceedings in the assessment, AO mentioned the limb “**concealed the particulars of income**” whereas while levying the penalty, AO mentioned both limbs (*“furnished inaccurate particulars of income and thereby concealed the income*) 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.

10. Since we have allowed the oral ground raised by the assessee, in our view, adjudication of ground raised by the assessee in the appeal becomes an academic exercise. Therefore, the said ground is dismissed as academic.

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

Order pronounced on this 03<sup>rd</sup> day of October, 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 : 03<sup>rd</sup> October, 2018.  
Satish

**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)-2, Pune.
4. आयकर आयुक्त / The Pr.CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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