

**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.866 & 867/PUN/2015  
निर्धारण वर्ष / Assessment Years : 2005-06 & 2006-07**

Yog Industries Ltd.,  
10, Shriniketan Colony,  
Jalna Road,  
Aurangabad-431001 ..... अपीलार्थी/Appellant  
PAN: AAACY1238P

Vs.

The Asst. Commissioner of Income-tax,  
Circle 1, Aurangabad ..... प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA Nos.868 & 869/PUN/2015  
निर्धारण वर्ष / Assessment Years : 2007-08 & 2008-09**

Yog Industries Ltd.,  
10, Shriniketan Colony,  
Jalna Road,  
Aurangabad-431001 ..... अपीलार्थी/Appellant  
PAN: AAACY1238P

Vs.

The Asst. Commissioner of Income-tax,  
Circle 1, Aurangabad ..... प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA Nos.881 & 882/PUN/2015  
निर्धारण वर्ष / Assessment Years : 2007-08 & 2008-09**

The Asst. Commissioner of Income-tax,  
Circle 3, Aurangabad ..... अपीलार्थी/Appellant

Vs.

Yog Industries Ltd.,  
10, Shriniketan Colony,  
Jalna Road,  
Aurangabad-431001 ..... प्रत्यर्थी / Respondent  
PAN: AAACY1238P

Assessee by : None  
 Revenue by : Shri Rajesh Gawli

सुनवाई की तारीख / Date of Hearing : 04.10.2018	घोषणा की तारीख / Date of Pronouncement: 15.10.2018
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### आदेश / ORDER

#### PER SUSHMA CHOWLA, JM:

Out of this bunch of appeals, two appeals filed by assessee and cross appeals filed by assessee and Revenue are against consolidated order of CIT(A)-2, Aurangabad, dated 31.03.2015 relating to assessment years 2005-06 to 2008-09 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 issue raised in the bunch of appeals filed by assessee and cross appeals filed by Revenue in assessment years 2007-08 and 2008-09 is against levy of penalty under section 271(1)(c) of the Act. However, in order to adjudicate the issue, reference is being made to the facts in ITA No.866/PUN/2015, relating to assessment year 2005-06.

4. The assessee in ITA No.866/PUN/2015, relating to assessment year 2005-06 has raised the following grounds of appeal:-

1. *The learned CIT(A) has erred on facts and in law in confirming 50% of the penalty u/s 271(1)(c) at an amount of Rs.1,69,081/-.*

2. *The learned CIT(A) has further erred on facts and in law in levying a penalty of Rs.76,705/- by way of enhancement of penalty not levied by the Assessing Officer.*

5. Briefly, in the facts of the case, assessment under section 143(3) r.w.s. 153A of the Act was completed against assessee. The assessee was engaged in manufacturing of craft paper and allied products. Search under section 132 of the Act was conducted at the business and residential premises of different members / concerns of Yog group, Aurangabad on 21.02.2008. Since the search warrant issued in the name of assessee company, notice under section 153A of the Act was issued to the assessee, in response to which the assessee filed return of income declaring total income of ₹ 90,97,000/-. The Assessing Officer while completing assessment vide order dated 30.12.2009 made certain additions in the hands of assessee. First addition was on account of sub-contract payments and in assessment year 2005-06, addition of ₹ 8 lakhs was made. The Assessing Officer initiated penalty proceedings as per Explanation 1 to section 271(1)(c) of the Act for furnishing inaccurate particulars of income. Thereafter, in penalty order levying penalty under section 271(1)(c) of the Act, the Assessing Officer held the assessee to have deliberately furnished inaccurate particulars of its total income and concealing taxable income and hence, it was held to be a fit case for imposition of penalty under section 271(1)(c) of the Act.

6. The CIT(A) upheld the levy of penalty on account of inflated expenditure on 50% of amount of estimated addition. Further, in assessment years 2007-08 and 2008-09, penalty was also levied on account of rejection of claim of assessee of revenue expenditure debited to capital work-in-progress.

7. The Assessing Officer recorded satisfaction and initiated penalty proceedings as per Explanation 1 to section 271(1)(c) of the Act for furnishing

inaccurate particulars of income. Similarly, penalty was levied as in other cases for furnishing inaccurate particulars of its total income and concealing its taxable income.

8. The CIT(A) has deleted aforesaid penalty since it had disclosed all particulars of its claim, against which the Revenue is in appeal.

9. Despite service of notice, none appeared on behalf of assessee nor any application was moved for adjournment.

10. The learned Departmental Representative for the Revenue stressed that quantum appeals were pending. However, it was pointed out to the learned Departmental Representative for the Revenue that the issue now stands covered by 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. He though stressed that appeals are to be kept pending till disposal of quantum appeals, on perusal of record and after hearing the learned Departmental Representative for the Revenue, we find that the issue raised in present appeal on levy of penalty under section 271(1)(c) of the Act stands squarely covered by the order of jurisdictional High Court in CIT Vs. Shri Samson Perinchery (supra). Once the issue stands covered, then there is no merit in keeping the appeals pending on the ground that quantum appeals are pending. In any case, the quantum appeals and levy of penalty as held by various Courts, are independent proceedings.

11. The assessee had furnished return of income in response to notice under section 153A of the Act after search was carried out at his business / residential premises. Consequent thereto, assessment proceedings were

completed in the hands of assessee and estimated addition was made of ₹ 8 lakhs on account of inflated expenses relating to assessment year 2005-06. Similar addition has been made in all the other years also, which are in appeal before us. The Assessing Officer while making the aforesaid addition has recorded satisfaction for initiating penalty proceedings which read as under:-

“6.5.....

*Penalty proceedings as per explanation-1 to section 271(1)(c) of the I.T. Act, 1961 are separately initiated for furnishing inaccurate particulars of income.”*

12. Thereafter, the Assessing Officer had held the assessee to be in default observing as under:-

*“4.10..... Hence, from the above discussion it is well established that assessee has deliberately furnished inaccurate particulars of its total income and has concealed taxable income to the tune of Rs.9,24,130/-.”*

13. The Assessing Officer has thus, initiated penalty proceedings under Explanation 1 to section 271(1)(c) of the Act, which deals with concealment of income and for furnishing of inaccurate particulars of income, which is the other limb 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.

14. The Hon'ble Bombay High Court in CIT Vs. Shri Samson Perinchery (supra) 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.

15. In the facts of present case, where the Assessing Officer while making addition in the assessment order had initiated penalty proceedings for both the limbs i.e. under Explanation 1 for concealment of income and for furnishing inaccurate particulars of income, the said satisfaction so recorded is not as per the requirement of the Act. The Assessing Officer has to come to a finding as to which limb of section has not been fulfilled by the assessee.

16. Now, coming to the penalty order passed by Assessing Officer, where the assessee was held to have concealed the particulars of income in the form of bogus purchases and to have furnished inaccurate particulars of income. Again, the Assessing Officer has not come to a finding as to which limb of section 271(1)(c) of the Act has not been fulfilled by the assessee. 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. Accordingly, we direct the Assessing Officer to delete penalty levied under section 271(1)(c) of the Act. The grounds of appeal raised by assessee in all the appeals are thus, allowed.

17. In respect of second issue of additions made in assessment years 2007-08 and 2008-09 on account of revenue expenditure debited to Capital Work-in-progress, wherein the CIT(A) has deleted penalty and the Revenue is in appeal before us and we find that similar satisfaction has been recorded as in respect of addition made on account of estimated sub-contractor payments. Penalty proceedings were initiated as per Explanation 1 to section 271(1)(c) of the Act

for furnishing inaccurate particulars of income. Penalty has been levied both for concealment and for furnishing inaccurate particulars of income. Applying the same parity as in respect of other orders, we hold that satisfaction recorded in the said case was not correct and the order/s levying penalty on both the limbs of section 271(1)(c) of the Act do not stand and the same are held to be invalid. Accordingly, the order of CIT(A) is upheld on jurisdictional issue of levy of penalty, being invalid. The grounds of appeal raised by Revenue in both the appeals are thus, dismissed.

18. In the result, the appeals of assessee are allowed and appeals of Revenue are dismissed.

Order pronounced on this 15<sup>th</sup> day of October, 2018.

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

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

पुणे / Pune; दिनांक Dated : 15<sup>th</sup> October, 2018.

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2, Aurangabad;
4. The Pr.CIT-2, Aurangabad;
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