

आयकर अपीलिय 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.652 & 653/PUN/2014  
निर्धारण वर्ष / Assessment Years : 2002-03 & 2008-09

Shri Ratanlal C. Bafna,  
Prop. of R.C. Bafna Silver Palace,  
96, Subhash Chowk,  
Jalgaon – 425001

PAN : AAMPB3939K

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Joint Commissioner of Income Tax,  
Range – 1, Jalgaon

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Ganoo  
Revenue by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 17-07-2018  
घोषणा की तारीख / Date of Pronouncement : 12-10-2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

The assessee in ITA No. 652/PUN/2014 for the assessment year 2002-03 has assailed the order of Commissioner of Income Tax (Appeals)-2, Nashik dated 11-02-2014 confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2002-03. In ITA No. 653/PUN/2014 the assessee has impugned the order of Commissioner of Income Tax (Appeals)-2, Nashik

dated 11-02-2014 for the assessment year 2008-09 confirming levy of penalty u/s. 271(1)(c) of the Act.

**ITA No. 652/PUN/2014 (A.Y. 2002-03)**

2. Shri Sunil Ganoo appearing on behalf of the assessee submitted that in assessment year 2002-03 the Assessing Officer inter alia made additions on account of unaccounted advances Rs.2,91,36,825/- and unaccounted interest income Rs.82,81,598/- and initiated penalty u/s. 271(1)(c) in respect of above additions. In First Appellate proceedings restricted the additions in respect of undisclosed advances to Rs.9,30,000/- and on account of unaccounted interest Rs.62,51,754/-. The Assessing Officer while initiating penalty proceedings u/s. 271(1)(c) has recorded satisfaction for levy of penalty without confirming to the legal requirements. The Assessing Officer has not specified the charge for which penalty u/s. 271(1)(c) is to be levied. Thus, the satisfaction recorded is ambiguous. The assessee is in absolute darkness to defend the penalty proceedings. The ld. AR contended that in order levying penalty dated 05-03-2012, the Assessing Officer has levied penalty in respect of both the above additions for concealment of income.

2.1 The ld. AR submitted that in the notice issued u/s. 274 r.w.s. 271 dated 23-12-2009 both the limbs of section 271(1)(c) have been mentioned. Thus, the ambiguity is multiplied with respect to charge for levy of penalty u/s. 271(1)(c) of the Act.

3. On the other hand Shri Mukesh Jha representing the Department vehemently defended the satisfaction recorded by Assessing Officer for levying penalty and the consequent proceedings arising therefrom. The ld. DR submitted that the Hon'ble Supreme Court of India in the case of Mak

Data P. Ltd. Vs. Commissioner of Income Tax reported as 358 ITR 593 has held that there is no specific format for recording of satisfaction.

4. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. A perusal of the assessment order shows that the Assessing Officer has initiated penalty proceedings u/s. 271(1)(c) with respect to two additions i.e. undisclosed advances and undisclosed interest income. While recording satisfaction for initiating penalty the charge u/s. 271(1)(c) has not been specified. The Assessing Officer failed to mention whether the penalty proceedings u/s. 271(1)(c) are being initiated for furnishing inaccurate particulars or concealment of income. Thus, the assessee is in vacuum about the charge to defend in penalty proceedings. Although, while levying penalty the Assessing Officer has specified that the penalty is being levied for concealment of income.

5. It is a trite law that while recording satisfaction for levy of penalty the Assessing Officer should specify the charge for which penalty is being levied. The Hon'ble Karnataka High Court in the case of Commissioner of Income Tax Vs. Manjunatha Cotton & Ginning Factory reported as 359 ITR 565 has held that the principle of natural justice demand that the assessee should know the ground which he has to meet specifically in penalty proceedings. In case of ambiguity, penalty proceedings are legally unsustainable. In the present case as mentioned earlier the Assessing Officer has not mentioned the charge for levy of penalty at the time of recording satisfaction hence, penalty proceedings suffer from vagueness and ambiguity. The penalty levied on such ambiguous satisfaction is bad in law and hence is liable to be quashed. We hold and direct accordingly.

6. In the result, the appeal of assessee is allowed in the terms aforesaid.

**ITA No. 653/PUN/2014 (A.Y. 2008-09)**

7. The ld. AR submitted that in assessment year 2008-09 penalty proceedings u/s. 271(1)(c) have been initiated in respect of two additions viz. unexplained advances and interest on unexplained advances. The Assessing Officer recorded satisfaction for levy of penalty u/s. 271(1)(c) qua the above additions for furnishing inaccurate particulars of income. However, in concluding part of the assessment order, the Assessing Officer mentioned both the charges u/s. 271(1)(c) i.e. furnishing inaccurate particulars of income and thereby concealment of income. At the time of levy of penalty the Assessing Officer levied penalty for concealment of income. The ld. AR submitted that the Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Samson Perinchery reported as 392 ITR 4 has held that where the satisfaction has been recorded under one limb of section 271(1)(c) and penalty has been levied on another, such penalty order is not sustainable in the eye of law. The ld. AR further to support his submissions placed reliance on the decision of Co-ordinate Bench of the Tribunal in the case of Mohan Pralhad Patil Vs. Dy. Commissioner of Income Tax in ITA No. 202/PUN/2015 for assessment year 2005-06 decided on 09-03-2017.

8. On the other hand the ld. DR submitted that four additions were made by the Assessing Officer and the satisfaction for levy of penalty u/s. 271(1)(c) has been recorded in respect of three additions i.e. in respect of unaccounted advances, interest on unaccounted advances and unrecorded sales. The Assessing Officer has recorded satisfaction for levy of penalty u/s. 271(1)(c) separately for each of the additions for furnishing of

inaccurate particulars of income. Thus, there is no ambiguity with respect to charge for levy of penalty at the time of recording of satisfaction. The ld. DR asserted that even at the time of levy of penalty the Assessing Officer in para 9 of the order has categorically mentioned same charge i.e. furnishing inaccurate particulars of income. Thus, at the time of recording of satisfaction and at the time of levy of penalty there is no ambiguity in the mind of Assessing Officer. Therefore, there is no deficiency in levy of penalty either at the time of initiation or at the time of levy.

9. Both sides heard. Orders of the authorities below perused. A perusal of assessment order shows that the Assessing Officer has recorded satisfaction for initiating penalty proceedings u/s. 271(1)(c) in respect of three additions i.e. (i) unaccounted advances, (ii) interest on unaccounted advances, and (iii) unrecorded sales along with profits thereon. For all the above additions the Assessing Officer has recorded separate satisfaction along with respective additions and has categorically mentioned that the penalty proceedings are initiated for furnishing inaccurate particulars of income. However, while concluding assessment order the Assessing Officer mentioned both the limbs of section 271(1)(c) for initiating penalty proceedings. The relevant extract of the assessment order is reproduced here-in-below :

*“Assessed U/s. 143(3). Charge interest U/s. 234B/234C. Give credit to paid taxes on verification. Issue demand notice and challan accordingly. Issue show cause notice U/s. 271(1)(c) of the I.T. Act, 1961 for furnishing inaccurate particulars of income and thereby concealment of income.”*

10. A perusal of penalty order passed u/s. 274 r.w.s. 271(1)(c) of the Act reveal that in para 9 of the order the Assessing Officer has held that *“the assessee’s case falls under the category of furnishing inaccurate particulars of income”*. Thereafter in para 10 of penalty order the Assessing Officer

finally concludes that the assessee has concealed income. Para 10 of the penalty order reads as under :

*“10. After considering all the aspects of the case and also considering the facts that the assessee had given unaccounted advances and so also earned interest thereon and made unrecorded transaction of sale of gold and silver and earned profit thereon, which conclusively proves beyond doubt that, the assessee has concealed income of Rs.1,38,52,596/- and thereby made herself liable for levy of penalty u/s. 271(1)(c).”*

11. A joint reading of satisfaction recorded in the assessment order and final conclusion of Assessing Officer while levying penalty vide order dated 14-03-2013 passed u/s. 274 r.w.s. 271(1)(c) shows that at the time of recording of satisfaction the Assessing Officer had come to the conclusion that penalty u/s. 271(1)(c) has to be levied for **furnishing inaccurate particulars of income.** The ambiguity with regard to limb for levy of penalty u/s. 271(1)(c) surfaced in the mind of Assessing Officer at the time of passing penalty order. Therefore, in para 9 of the penalty order the Assessing Officer mentions that the case of assessee falls in the category of furnishing inaccurate particulars and finally in para 10 the Assessing Officer changed his view and **levied penalty for concealing income.** The ambiguity in the mind of Assessing Officer while passing the penalty order is conspicuous writ large.

12. The Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax Vs. Samson Perinchery (supra) has held that where satisfaction has been recorded on one ground and penalty is levied on another such penalty has held the penalty order bad in law. The relevant extract of the order of Hon'ble High Court reads as under :

*“6. The above submission on the part of the Revenue is in the face of the decision of the Supreme Court in Ashok Pai v/s. CIT 292 ITR 11 [relied upon in Manjunath Cotton & Ginning Factory (supra)] – wherein it is observed that concealment of income and furnishing of inaccurate particulars of income in Section 271(1)(c) of the Act, carry different meanings/ connotations. Therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under Section 271(1)(c) of the Act, for initiation*

*of penalty proceedings will not warrant/ permit penalty being imposed for the other breach. This is more so, as an Assessee would respond to the ground on which the penalty has been initiated/notice issued. It must, therefore, follow that the order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated, and it cannot be on a fresh ground of which the Assessee has no notice.”*

13. Thus, in the light of facts of the case and the decision of Hon'ble Jurisdictional High Court, the order levying penalty is not sustainable in the eye of law and is thus quashed.

14. In the result, the appeal of assessee is allowed.

15. To sum up, both the appeals of assessee are allowed.

Order pronounced on Friday, the 12<sup>th</sup> day of October, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 12<sup>th</sup> October, 2018

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)- 2, Nashik
4. आयकर आयुक्त / The CIT- 2, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच,  
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.  
//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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