

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" 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.2087/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2009-10

Shri Nilesh Subhash Chopda,  
L-35, MIDC,  
Ahmednagar – 414 111  
PAN : AARPC7558C

.....अपीलार्थी/Appellant

Vs.

DCIT, Ahmednagar Circle,  
Ahmednagar

.....प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None  
प्रत्यर्थी की ओर से / Respondent by : Shri Rajesh Gawli

सुनवाई की तारीख / Date of Hearing : 11.10.2018	घोषणा की तारीख / Date of Pronouncement: 12.10.2018
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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 04-05-2016 for the Assessment Year 2009-10.

2. Grounds raised by the assessee read as under :

*The Appellant most respectfully states that each Ground of Appeal herein below is without prejudice to each other.*

1. On the facts and in the circumstances of the case and in law, the Order levying penalty u/s.271 (1)( c) as confirmed by the learned CIT(A), is bad in law as the show cause notice issued u/s. 274 of the Act is defective, invalid, and bad in law for it does **not specify as to whether penalty proceeding is being initiated for concealing particulars of income or furnishing inaccurate particulars of income.**

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in confirming the penalty order passed by the learned AO without recording the requisite satisfaction regarding

*concealment of particulars of income or furnishing of inaccurate particulars as required by the provisions of section 271(1)(c) and therefore the levy of penalty is not justified/not tenable.*

3. *On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in conforming the Penalty Order passed by the AO, without appreciating that the learned AO has passed the Assessment Order on the basis of his own judgement and that additions under Sec.69 are not sustainable in case of assessment being best judgement Assessment.*

4. *On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in conforming the Penalty Order passed by the AO, without appreciating that:*

*[a] The Appellant has voluntarily come forward and accepted addition subject to non levy of penalty u/s. 271(1)(c) so as to purchase peace of mind and avoid protracted litigation.*

*(b) The learned AO has passed order levying Penalty without appreciating the submissions of the appellant.*

*The appellant craves leave to add, amend, alter, vary and/or withdraw any or all the above grounds of appeal and/or to adduce and rely upon such further evidence/additional evidence and/or documents as may be required at any time during the appeal proceedings.*

**PRAYER:**

*The Appellant most respectfully prays as under:*

1. *The impugned order may kindly be quashed and set aside.*
2. *The Penalty levied u/s.271(1)(c) may kindly be deleted.*
3. *Any further Order in the interest of justice and equity may kindly be passed."*

3. Briefly stated relevant facts include that the assessee is an individual and is engaged the business of manufacturing of wooden boxes. Assessee filed the return of income on 30-09-2009 declaring total income of Rs.17,79,568/-. In the assessment, the issue relating to purchase of plot of land situated at Sy.No.265/2, Ahmednagar for a consideration of Rs.12 lakhs was under scrutiny. The assessee's share is 50% in the said property. The said transaction is not entered in the books of account. The expenditure incurred thereof in respect of stamp duty and registration charges are also not recorded in the books of accounts. AO proceeded to

add Rs.6 lakhs as unexplained income u/s.69 of the Act and unexplained expenditure u/s.69C of the Act amounting to Rs. 1,38,485/-. AO also made other addition of Rs.2 lakhs on account of excess consumption of raw material and Rs.2 lakhs on account of commission paid to Mrs. Priya Punamchand Munot/Mrs. Rajeshri Jitendra Munot. Penalty proceedings u/s.271(1)(c) of the I.T. Act were initiated for “furnishing inaccurate particulars of income”. Eventually, the AO levied penalty of Rs.2,51,011/-.

4. In the First Appellate proceedings, the CIT(A) relying on the judgment of Hon’ble Delhi High Court in the case of Durga Timber Works Vs. CIT 79 ITR 63 and judgment of Hon’ble Allahabad High Court in the case of Banaras Chemical Factory Vs. CIT 108 ITR 96 confirmed the levy of penalty. Aggrieved with the order of CIT(A), the assessee is in appeal before the Tribunal with the aforesaid grounds.

5. Ld. DR for the Revenue relied heavily on the orders of AO and the CIT(A) and prayed for confirming the same.

6. Assessee filed an adjournment application dated 05-10-2018 stating that the tax consultant who is looking after the tax matters of the assessee was not coming to duty on account of demise of his younger brother. However, on going through the facts of the case, we find the present appeal can be disposed on technical grounds. AO did not mention the satisfaction validly qua the limb of clause (c) of section 271(1) of the Act. We find identical cases were heard and allowed by us in many cases. Therefore, we proceed to decide the appeal on the basis of material available on record after hearing the Ld. DR for the Revenue.

7. Heard the Ld. DR for the Revenue and perused the orders of the Revenue. Assessee raised the grounds relating to **recording of proper**

**satisfaction** by the AO. In this connection, we perused the assessment order dated 20-12-2011 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 :

*“7. Assessed u/s.143(3). Issue DN/Challan accordingly. Issue notice u/s.271(1)(c) for **furnishing inaccurate particular of income.**”*

7.1 We also perused the penalty order dated 08-06-2012 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:

*“.....  
..... Thus the assessee has **concealed the particulars of his income within the meaning of section 271(1)(c) of the I.T. Act, 1961.**”*

From the above, it is evident that at the time of initiation of penalty proceedings in the assessment, AO mentioned the limb **“furnishing inaccurate particulars of income”** whereas while levying the penalty, AO mentioned both limbs **“Concealed the particulars of income”**. This manner of recording of satisfaction suggests the existence of ambiguity with reference to applicability of specific limb. 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. Our decision is fortified by the 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. Accordingly,

relevant grounds on the issue of satisfaction are allowed in favour of the assessee.

8. Since we have allowed the legal grounds No.1 and 2 raised by the assessee in the appeal, in our view, the adjudication of other grounds raised by the assessee on merits in the appeal, becomes an academic exercise. Therefore, the said grounds are dismissed as academic.

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

Order pronounced on this 12<sup>th</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 : 12<sup>th</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 "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

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