

आयकर अपीलिय 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 Nos.1209 & 1210/PUN/2016
निर्धारण वर्ष / Assessment Years : 2011-12 & 2007-08

Anil Shantilal Gandhi,
502, Harekrishna Apartment,
Near BSNL Office, Ramdaspath,
Nagpur - 440010

PAN : AEFPG4257A

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Central Circle - 1, Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri Rajesh Gawli

सुनवाई की तारीख / Date of Hearing : 08-10-2018
घोषणा की तारीख / Date of Pronouncement : 10-10-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

ITA No. 1209/PUN/2016 (A.Y. 2011-12)

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-12, Pune dated 11-03-2016 for the assessment year 2011-12.

2. The brief facts of the case as emanating from records are : A search and seizure action u/s. 132 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) was carried out in the case of Ashoka Group on 20-04-2010. The assessee is one of the Directors of Ashoka Group of companies and his residential premises was also covered under the search. During the course of search gold jewellery weighing 2835.75 gms and silverware weighing 57.2 kg were found. During the course of search the assessee voluntarily offered 30 kg of silver and 990 gms jewellery as undisclosed investment. During assessment proceedings the Assessing Officer added remaining jewellery and silverware as undisclosed investment. Thus, the Assessing Officer made addition as under :

Jewellery 1250 grams @ Rs.1,086 per gram = Rs.13,57,500/-

Silverware 27.2 kgs @ Rs.24,480 pkg = Rs.6,65,856/-

Aggrieved by the assessment order dated 26-03-2013 passed u/s. 143(3) r.w.s. 153B of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) following CBDT Instructions No. 1916 dated 11-05-1994 deleted the addition with respect to gold jewellery. However, the Commissioner of Income Tax (Appeals) confirmed the addition with regard to silver utensils weighing 22.2 kg. Thus, relief of 5 kg silver was allowed by the First Appellate Authority. Against the findings of Commissioner of Income Tax (Appeals) confirming addition in respect of silver weighing 22.2 kg, the assessee is in appeal before the Tribunal.

3. Shri Pramod Shingte appearing on behalf of the assessee submitted that the assessee belongs to Marwari family and there is custom to serve guests and relatives during festivals and various family occasions in silver

utensils. The silver utensils were received by the assessee's family on various social occasions over the period of time.

4. On the other hand Shri Rajesh Gawli representing the Department strongly supported the findings of Commissioner of Income Tax (Appeals). The ld. DR submitted that the Commissioner of Income Tax (Appeals) has been quite considerate in granting relief to the assessee. The assessee has failed to explain the source of investment in huge quantity of silver items. The ld. DR prayed for dismissing the appeal of assessee.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee in appeal has raised solitary issue of sustaining addition of 22.2 kg silverware in the assessment year under appeal. Undisputedly, during search action silver ware/silver utensils weighing 57.2 kg were found. The assessee voluntarily offered 30 kg of silverware as undisclosed investment. In assessment proceedings the Assessing Officer added 27.2 kg silverware on account of unexplained investment. The Commissioner of Income Tax (Appeals) granted part relief of 5 kg silverware to the assessee and confirmed the addition of 22.2 kg silverware. Taking into consideration the living standard, customs etc. of the assessee's family, confirmed the addition of remaining 22.2 kg. After taking into consideration entire facts we are of considered view that the findings of Commissioner of Income Tax (Appeals) in confirming addition of 22.2kg of silverware are well reasoned and hence, warrants no interference. Accordingly, the findings of Commissioner of Income Tax (Appeals) are confirmed and grounds raised by the assessee in appeal are dismissed.

6. In the result, the appeal of assessee is dismissed.

ITA No. 1210/PUN/2016 (A.Y. 2007-08)

7. The assessee in appeal has assailed the order of Commissioner of Income Tax (Appeals)-12, Pune dated 10-03-2016 for the assessment year 2007-08 in confirming levy of penalty u/s. 271(1)(c) of the Act.

8. The ld. AR at the outset submitted that the penalty levied u/s. 271(1)(c) of the Act suffers from technical defect, on account of charge. The ld. AR pointed that while recording satisfaction in the assessment order dated 26-03-2013, passed u/s. 143(3) r.w.s. 153A the Assessing Officer has mentioned both the charges i.e. concealment/furnishing inaccurate particulars of income. In order levying penalty, the Assessing Officer has again mentioned both the limbs of section 271(1)(c) of the Act. The ambiguity in the mind of Assessing Officer with regard to charge for levy of penalty u/s. 271(1)(c) is conspicuous on both the stages.

9. The ld. DR vehemently opposed the arguments raised by the ld. AR of assessee. The ld. DR pointed that this issue has been raised by the assessee for the first time before the Tribunal.

10. Both sides heard. Orders of the authorities below perused. The assessee in appeal has assailed the manner of levy of penalty. Since, the issue raised by the ld. AR is legal and the facts are already on record, it has to be admitted in the light of decision of Hon'ble Supreme Court of India in the case of National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax reported as 229 ITR 383.

11. A perusal of assessment order shows that the Assessing Officer has made addition of Rs.6,53,764/- on account of undisclosed purchase of NSCs, Jewellery, investment in LIC Market etc. On the said addition penalty u/s. 271(1)(c) has been initiated. However, while recording satisfaction the Assessing Officer has mentioned both the charges of section 271(1)(c) of the Act. The relevant extract of the satisfaction recorded by the Assessing Officer reads as under :

“Since the assessee has concealed/furnished inaccurate particulars of his income, penalty proceedings u/s. 271(1)(c) of the Act are initiated separately.”

12. While levying penalty the Assessing Officer has again mentioned both the charges of section 271(1)(c) of the Act. The relevant extract of the penalty order reads as under :

“03. notwithstanding that such income is declared by him in any return of income furnish on or after the date of search, such assessee shall, for the purposes of imposition of penalty under clause (c) of sub-section (i) of section 271 be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.”

13. A perusal of satisfaction recorded by the Assessing Officer and the order levying penalty clearly shows that there was ambiguity in the mind of Assessing Officer with regard to charge for which penalty is to be levied u/s. 271(1)(c) of the Act. 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 charge for which penalty is to be levied has to be communicated to the assessee in an unambiguous terms. If the charge for levy of penalty is not decipherable from satisfaction recorded, initiation of penalty and subsequent proceedings arising therefrom are bad in law. In the present case, the Assessing Officer has erred in mentioning both the limbs of section 271(1)(c) while recording

satisfaction and the ambiguity continues even at the time of passing order levying penalty. Thus, the order levying penalty is bad in law and the subsequent proceedings arising therefrom are vitiated.

14. In the result, the impugned order is set aside and the appeal of assessee is allowed.

15. To sum up, ITA No. 1209/PUN/2016 is dismissed and ITA No. 1210/PUN/2016 is allowed.

Order pronounced on Wednesday, the 10th 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 : 10th 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)-12, Pune
4. The Pr. CIT (Central), Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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