

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 डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.480/PUN/2016
निर्धारण वर्ष / Assessment Year : 2008-09

V.J. & Sons
1227, E Rajaram Road,
Kolhapur - 416008

.... अपीलार्थी/Appellant

PAN: AABFV0324M

Vs.

The Asst. Commissioner of Income Tax,
Central Circle, Kolhapur

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri M.K. Kulkarni

प्रत्यर्थी की ओर से / Respondent by : Shri Sanjeev Ghei

सुनवाई की तारीख / Date of Hearing : 23.10.2018	घोषणा की तारीख / Date of Pronouncement: 31.10.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A), Pune-11, dated 21.12.2015 relating to assessment year 2008-09 against levy of penalty under section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following ground of appeal:-

01. *The learned Commissioner (Appeals) has erred in confirming the penalty of Rs.24,72,000/- under section 271(1)(c) of the Income Tax Act, 1961.*

3. The preliminary issue raised in the present appeal is against levy of penalty under section 271(1)(c) of the Act.

4. The learned Authorized Representative for the assessee pointed out that the issue raised in the present appeal is covered by series of orders of the Tribunal. He then pointed out that the Assessing Officer while recording satisfaction for initiating penalty proceedings had held the assessee to have concealed the particulars of income by furnishing inaccurate particulars thereof. Similarly, while levying penalty, the Assessing Officer vide para 5.1 had held the assessee not only to have furnished inaccurate particulars of income but also concealed the income. He pointed out that since the Assessing Officer has failed to initiate penalty proceedings on one of the limbs, order passed by Assessing Officer suffers from infirmity.

5. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

6. We have heard the rival contentions and perused the record. The jurisdictional issue which arises in the present appeal is non-recording of proper satisfaction while initiating penalty proceedings and also while passing penalty order. In the present case, certain additions were made in the hands of assessee. The Assessing Officer was of the view that penalty proceedings had to be initiated. However, while recording satisfaction in the assessment order, the Assessing Officer held the assessee to have concealed its income by furnishing inaccurate particulars and hence, penalty proceedings under section 271(1)(c) of the Act were initiated separately. Further, while passing penalty order under section 271(1)(c) of the Act, the Assessing Officer held *it is evident*

that the assessee not only furnished inaccurate particulars of income but also concealed the income. Consequent thereto, penalty under section 271(1)(c) of the Act was levied, against which the assessee is in appeal before us.

7. We find that the issue raised in the present appeal is squarely covered by the decision of 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, wherein it was held that where there is no proper satisfaction for levy of penalty and in the absence of proper show cause notice to the assessee, there is no merit in levy of penalty.

8. Following the same parity of reasoning, where the Assessing Officer has failed to come to a finding as to which limb of section 271(1)(c) of the Act has not been fulfilled and had initiated penalty proceedings and had also levied penalty on both limbs, the order passed by Assessing Officer suffers from infirmity and the same is cancelled. The ground of appeal raised by assessee is thus, allowed.

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

Order pronounced on this 31st day of October, 2018.

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक Dated : 31st 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), Pune-11;
4. The CIT(Central), Pune;
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