

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.2389/PUN/2016

निर्धारण वर्ष / Assessment Year : 2006-07

Neha Samyak Lodha,
Lodha Bhavan, Mahavir Nagar Marg,
Near Govt. Hospital, Satana Road,
Malegaon, Nashik – 423203

PAN : AODPS2223Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Central – 1, Nashik

.....प्रत्यर्थी / Respondent

Assessee by : N O N E (Written Submission)
Revenue by : Sabhana Parveen

सुनवाई की तारीख / Date of Hearing : 13-11-2018

घोषणा की तारीख / Date of Pronouncement : 15-11-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-12, Pune dated 23-07-2016 for the assessment year 2006-07 confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. Notice of the appeal was sent to the assessee through RPAD. None appeared on behalf of the assessee despite service of notice. However, the assessee has filed written submissions. The same are reproduced here-in-below :

"Facts of the case"

1. Appellant, an individual filed original return of income on 26/06/2006 declaring Total income at Rs.1,48,940/-.
2. Before marriage i.e. 10th February, 2002, the appellant was staying in Indore, Madhya Pradesh. After marriage she is staying in Malegaon, Dist : Nashik, Maharashtra.
3. Before marriage she was partner in M/s. M. Mehta & Co, Indore. However, after marriage on 10th February, 2002 appellant shifted to place of her in-laws at Malegaon. Hence, she disclosed Rs.6,000/- being amount actually received from M/s. M. Mehta & Co. as her professional income in her return of income for the year under appeal.
4. There was search action in the residential premises of Shri Bhagchand Lodha on 21/05/2009.
5. In response to notice u/s. 153C, the appellant filed return of income on 29/08/2011 showing Total Income at Rs.2,18,787/-.
6. The additional income shown in the return of income filed u/s. 153C was on account of remuneration as well as interest on capital shown in the name of appellant by the firm M/s. M. Mehta & Co., Indore.
7. No any direct or indirect query was raised by the Revenue either during search action or during assessment proceedings in respect of additional Income shown by appellant. The appellant has disclosed the abovementioned additional income on her own without there being any query by Revenue.
8. The assessment was completed at the returned income.
9. The impugned penalty is levied on difference in income as per original return of income as well as return filed in response to notice u/s. 153C.
10. No any exact charge i.e. furnishing or concealing particulars of income, is specified either in assessment order or notice issued or penalty order.
11. The order levying penalty is served on the appellant after almost three years from date of order levying impugned penalty.

Grounds of Appeal No. 1 & 2

1. The appellant has disclosed the additional income on her own without there being any query by revenue either during the course of search action or during the course of assessment proceedings.
2. As after marriage the appellant is staying at Malegaon, Maharashtra, she included the amount actually received from My s. M. Mehta & Co in her professional income. The mistake was bona fide and without any mala fide intention. There is also no finding in the assessment order that

the appellant was having any guilt mind while filing original return of Income.

Therefore, impugned penalty levied u/s. 271(1)(c), please be cancelled because the income is offered by the appellant her own and the default was not at all intentional.

Grounds of Appeal No. 3

1. *It is undisputed fact that the order levying penalty was neither served on the appellant nor was same put into motion for being served on the appellant within the statutory time limit.*
2. *The order levying penalty is shown to be passed on 29/06/2012 and the same was served on the appellant on 27/04/2015 (Page No. 7 of paper book) when an application was made on behalf of appellant to serve the order levying penalty as well as notice of demand and also evidence of having served the same on appellant if already served (page Nos. 5 of paper book).*
3. *It is undisputed fact that the order levying penalty was not served on the appellant in 2012 because the appeal filed on 25/05/2015 against the order dated 29/06/2012 was admitted by CIT(A) without there being any application on behalf of the appellant to condone the delay, if any.*
4. *Therefore, as the order levying penalty is not put into motion to serve on the appellant within the statutory time limit of section 275, the same please be quashed.*
5. *Reliance is placed on the decision of Pune Bench in the case of Income Tax Officer vs. Suman Vastra Alankar (ITA No. 1048/PN/2011 dated 30-08-2012), in which it is held that order dispatched after statutory time period is bad in law and the same was annulled.*

Grounds of Appeal No. 4

1. *The order levying penalty ix)», 271(1)(c) please be annulled because the A.O. has not specified the specific charge framed against the appellant either in the assessment order or in notice issued u/s. 271(1)(c) or in the penalty order i.e. the proceedings are initiated for 'furnishing inaccurate particulars' or 'concealing particulars' of income.*
2. *In the assessment order the A.O. has not at all specified any charge and the notice u/s. 271(1)(c) is issued by the A.O. under both the charges (page No. 1 of paper book).*
3. *Further, the impugned penalty is also levied under both the charges.*
4. *Reliance is placed on the decision of Pune Tribunal in the case of Sanjog Tarachand Lodha vs Income Tax Officer, ITA Nos. 688-9/PN/2014 dated 31/08/2015.*
5. *The CIT(A) has not addressed the issue in spite of specific arguments made in this respect (page No. 9 to 11. of paper book, more particularly clause No. 4 of page No. 10).*

On the basis of above submission, I kindly request your honor to delete the penalty levied u/s. 271(1)(c).”

3. Sabhana Parveen representing the Department vehemently defended the order of Commissioner of Income Tax (Appeals) and prayed for dismissing the appeal of assessee.

4. We have perused the written submissions filed by the assessee and have examined the order of authorities below. A perusal of the assessment order shows that the penalty proceedings u/s. 271(1)(c) have been initiated in respect of addition of Rs.69,847/-. The Assessing Officer while initiating penalty proceedings has merely mentioned, “*penalty proceedings u/s. 271(1)(c) are separately initiated*”. The Assessing Officer has not specified the charge u/s. 271(1)(c) i.e. whether the penalty proceedings have been initiated for concealing the particulars of income or furnishing inaccurate particulars of income. However, while passing order levying penalty the Assessing Officer has mentioned both the charges of Section 271(1)(c) of the Act in para 7 of the order dated 29-06-2012. The relevant extract of the order is as under :

“7. I am satisfied that the assessee has without any reasonable cause, furnished an inaccurate particulars of income and thereby concealed his income to the extent of Rs.69,847/-. I, therefore, impose a penalty of Rs.14,170/- (Rs. Fourteen Thousand one hundred and seventy only) which works out @ 100% of tax sought to be evaded as against maximum penalty leviable at Rs.42,510/- which works out at 300% of tax sought to be evaded under section 271(1)(c) of the Income Tax Act, 1961.”

5. The manner in which satisfaction has been recorded and thereafter, penalty has been levied clearly shows that there was ambiguity in the mind of Assessing Officer with respect to charge for which penalty u/s. 271(1)(c) is to be levied. While recording satisfaction the Assessing Officer has omitted to mention charge for levy of penalty. 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

assessee should know the grounds which he has to meet specifically. Otherwise, the principle of natural justice is offended. On the basis of such proceedings, no penalty could be imposed on the assessee'.

6. Thus, where the Assessing Officer has failed to mention the charge at the time of recording of satisfaction for initiating penalty u/s. 271(1)(c) the penalty proceedings are liable to be quashed. In view of the facts of the case and law discussed above the appeal of assessee is allowed.

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

Order pronounced on Thursday, the 15th day of November, 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 : 15th November, 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. C.I.T. 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