

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 Nos.2670 to 2673/PUN/2016
निर्धारण वर्ष / Assessment Years : 2010-11 to 2013-14

M/s. Namrata Promoters & Builders,
At Sr.No.27, Gaira – Warale Gaon Road,
Near Talegaon MIDC, Talegaon,
Pune.

PAN : AABFN1737A

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Central Circle- 2(1),
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri V. L. Jain
Revenue by : Ms. Sheweta Mishra

सुनवाई की तारीख / Date of Hearing : 20.12.2018
घोषणा की तारीख / Date of Pronouncement : 31.12.2018

आदेश / ORDER

PER BENCH :

There are four appeals under consideration and it relates to the levy of penalty u/s 271(1)(c) and section 271AAB of the Act involves the assessment years 2010-11, 2011-12, 2012-13 and 2013-14 respectively.

ITA Nos.2670 to 2672/PUN/2016 – A.Y. 2010-11 to 2012-13

2. The appeals vide ITA Nos.2670 to 2672/PUN/2016 (three appeals by the assessee) relate to the levy of penalty u/s 271(1)(c) of the Act for the assessment years 2010-11 to 2012-13.

3. On hearing both the sides on these appeals of the assessee, we find the appeals are required to be allowed in favour of the assessee without going into the merits of the levy of penalty u/s 271(1)(c) of the Act. In this regard, we perused the assessment orders as well as penalty orders. We find the issues relating to the recording of satisfaction in the assessment proceedings for enabling the Assessing Officer to issue notice u/s 274 of the Act are common or significant. In this regard, we perused the order of the Assessing Officer in general and contents of para 7 in particular. For the sake of completeness, the relevant lines relating to the satisfaction is extracted as follows :-

“07., hence it is clear that the assessee had tried to conceal the particulars of income and furnished inaccurate particulars of income in the return filed in response to sec. 139. Therefore, penalty proceedings u/s 271(1)(c) are hereby separately initiated.”

4. Similarly, we also perused the penalty order dated 28.09.2015 and find the contents of para 7 are relevant to extract and the same are as follows :-

“07. In view of the above facts, I am satisfied that the assessee has furnished inaccurate particulars of its income and thereby has concealed his income for the A.Y. 2010-11. Therefore, I consider this to be a fit case for imposing penalty u/s 271(1)(c) of the I.T. Act, 1961. Accordingly, a penalty of Rs.14,69,600/- is hereby imposed on the assessee u/s 271(1)(c) of the I.T. Act, 1961.....”

5. From the above, it is evident that the Assessing Officer invoked both the limbs of clause (c) of section 271(1) of the Act by using the conjunction “and” while recording the satisfaction in the assessment order. This manner of giving satisfaction certainly falls short of the legal requirement. Such recording happens only when there is an ambiguity in the mind of the Assessing Officer *qua* the nature of default.

Similar is the manner adopted by the Assessing Officer for levying the penalty as seen from the extract given above. Further, we find the same is the manner of the Assessing Officer adopted in all the three appeals under consideration. Considering the same, we are of the opinion such recording of satisfaction does not make the penalty order sustainable. Therefore, considering the binding judgement of the Hon'ble Bombay High Court 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, we are of the opinion that such penalty order is unsustainable in law legally. It is a settled legal proposition from the said judgements, the Assessing Officer is under obligation to specify the appropriate limb of clause (c) of section 271(1) of the Act at the time of initiation as well as at the time of levy of penalty.

6. 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. Thus, we set-aside the order of CIT(A) and direct the Assessing Officer to delete the penalty on legal ground. The grounds raised by the assessee on this issue in all the three appeals are allowed.

ITA No.2673/PUN/2016 – A.Y. 2013-14

7. Now, coming to appeal in ITA No.2673/PUN/2016 (filed by the assessee) relates to the levy of penalty u/s 271AB of the Act for the assessment year 2013-14.

8. At the outset, ld. Counsel for the assessee deviated from the grounds raised before us and fairly submitted that this appeal is not pressed.

9. On hearing both the sides, the appeal filed by the assessee is dismissed as not pressed.

10. In the result, all the three appeals of the assessee for the assessment years 2010-11 to 2012-13 are allowed and the appeal of the assessee for assessment year 2013-14 is dismissed as not pressed.

Order pronounced on 31st day of December, 2018.

Sd/-	Sd/-
(विकास अवस्थी / VIKAS AWASTHY)	(डी. करुणाकरा राव/ D. KARUNAKARA RAO)
न्यायिक सदस्य/ JUDICIAL MEMBER	लेखा सदस्य/ ACCOUNTANT MEMBER
पुणे / Pune; दिनांक / Dated : 31 st December, 2018.	
Sujeet	

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-12, Pune.
4. The Pr. CIT, Central, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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