

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 No.91/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2012-13

DCIT, Circle-9,  
Pune

.....अपीलार्थी/Appellant

Vs.

Dr. Ranjana Ravindra Kadam,  
Manasi Vaccination Centre,  
Sani Bhoomi Housing Society,  
Behind Nigdi Bus Stop,  
Nigdi, Pune 411044  
PAN : ABAPK8197K

.....प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Sanjeev Ghei  
प्रत्यर्थी की ओर से / Respondent by : Shri Santosh Jadhav &  
Ms. Dabhedkhar

सुनवाई की तारीख / <b>Date of Hearing : 31.01.2019</b>	घोषणा की तारीख / <b>Date of Pronouncement: 01.02.2019</b>
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**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

This appeal is filed by the Revenue against the order of CIT(A)-13, Pune, dated 25-10-2016 in relation to the Assessment Year 2012-13.

2. Briefly stated, relevant facts include, that the assessee is a Doctor by profession. She filed the return of income declaring total income of Rs.1,37,46,603/-. A survey u/s.133A was carried out in the case of the assessee on 12-01-2012. In the said survey, assessee offered Rs.1.49 crore as additional income on account of unaccounted professional receipts. Assessee filed the return of income including the additional income offered during the survey. Assessee claimed certain expenses on account of Salary, Petrol & Vehicle expenses amounting to Rs.4,14,396/-. However,

the AO disallowed 15% of such expenses and thus disallowed Rs.62,160/- on the same. Eventually, AO determined the income at Rs.1,38,08,770/- and levied penalty of Rs.31,06,000/- u/s.271(1)(c) of the Act on the ground that the assessee concealed the particulars of her income.

3. Aggrieved the order of AO, the assessee filed an appeal before the CIT(A). The CIT(A) deleted the penalty levied by the AO. Contents of Para Nos. 2.2 to 2.6 of the order of CIT(A) are relevant. Aggrieved with the order of CIT(A), the Revenue is in appeal before the Tribunal with the following grounds :

*“1. Whether in facts and circumstances of the case the Ld.CIT(A) was justified in deleting the penalty levied of Rs. 31,06,000/- when the addition on which the penalty was levied was based on survey operation on assessee's hospital & a large difference was noticed between assessee's actual daily collection from hospital & manual recording in the books of accounts & daily accounting package.*

*2. Without prejudice to the above, the Ld.CIT(A) erred in not considering the Hon'ble Supreme Court's decision in the case of MAK Data P. Ltd. v/s Commissioner of Income Tax-II (CIVIL APPEAL NO. 9772 OF 2013, arising out of Special Leave Petition (Civil) No. 18389 of 2013) in which Hon'ble Supreme Court stated that under the explanation 1 to Section 271(1)(c) of the Act, It is trite law that the voluntary disclosure does not release the assessee from the mischief of penal proceedings. The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty.*

*3. The appellant craves leave to add, amend or alter any of the above grounds of appeal.”*

4. Before us, at the outset, Ld. Counsel for the assessee submitted that this is a case of survey action u/s.133A of the Act held on 12-01-2012 and the date falls within the previous year. The additional income offered during survey action was incorporated in the books of account and filed the return of income within the due date specified under the Act. On such facts, the penalty u/s.271(1)(c) is not leviable since no income is found

concealed as per the return of income so filed by the assessee. In this regard, he relied on the following decisions :

1. ACIT Vs. M/s. D.J. Builders and Developers – ITA No.1731/Mum/2012, dated 25-07-2014
  2. CIT Vs. Reliance Petroproducts Pvt. Ltd.
  3. Mak Data P. Ltd. Vs. CIT - Civil Appeal No.9772 of 2013, dated 30-10-2013
5. On the other hand, Ld. DR heavily relied on the order of the AO.
6. We have heard both the sides and perused the orders of the authorities below. We find, the assessee in the present case, filed the return of income u/s.139(1) offering the additional income disclosed during the survey action u/s.133A of the Act and the AO accepted the same u/s.143(3) of the Act. AO did not make any addition. Under such circumstances, it is amply clear that there is no concealment of furnishing of inaccurate particulars which warrants imposition of penalty. We, therefore, concur with the arguments of ld. AR on this very issue. Further, we perused the decisions relied on by the ld. AR. We find the Mumbai Bench of the Tribunal in the case of ACIT Vs. D.J. Builders and Developers (supra) relying on the judgment of Hon'ble Delhi High Court in the case of CIT Vs. SAS Pharmaceuticals 335 ITR 259 has held as under :

*“18. Thus, in view of the Hon'ble Delhi High Court, the provisions of sec.271(1)(c) should be interpreted strictly. If the ratio of the decision rendered by the Delhi High Court is applied to the facts of the present case, the **assessee cannot be imposed penalty u/s.271(1)(c), since it has already disclosed the surrendered amount as its income in the return of income.** The decision rendered by ld.CIT(A) is in accordance with the ration laid down by Hon'ble Delhi High Court. Accordingly, we do not find any infirmity in the decision taken by ld. CIT(A).*

6.1 Similar view has been taken by the Bangalore Bench of the Tribunal in the case of Shri Muninaga Reddy Vs. ACIT in ITA No.1488/Bang/2012, decided on 14-08-2013. Relevant paras from the said decision are extracted below :

**“10. There can be no concealment or non-disclosure, as the assessee had made a complete disclosure in the IT return and offered the surrendered amount for the purposes of tax and therefore no penalty under s. 271(1)(c) could be levied.** The words ‘in the course of any proceedings under this Act’ in Sec. 271 (1)(c) of the Act are prefaced by the satisfaction of the AO or the CIT(A). When a survey is conducted by a survey team, the question of satisfaction of AO or the CIT(A) or the CIT does not arise. One has to keep in mind that it is the AO who initiates penalty proceedings and directs the payment of penalty. He cannot record any satisfaction during the course of survey. Decision to initiate penalty proceedings is taken while making assessment order. It is, thus, obvious that the expression ‘in the course of any proceedings under this Act’ cannot have the reference to survey proceedings. It necessarily follows that concealment of particulars of income or furnishing of inaccurate particular of income by the assessee has to be in the IT return filed by it. The assessee can furnish the particulars of income in his return and everything would depend upon the IT return filed by the assessee. This view gets supported by Explanations 4 as well as 5 and 5A of s. 271. Obviously, no penalty can be imposed unless the conditions stipulated in the said provisions are duly and unambiguously satisfied. Since the assessee was exposed during survey, may be, it would have not disclosed the income but for the said survey. However, there cannot be any penalty only on surmises, conjectures and possibilities. Sec. 271(1)(c) has to be construed strictly. Unless it is found that there is actually a concealment or non-disclosure of the particulars of income, penalty cannot be imposed. There is no such concealment or nondisclosure as the assessee had made a complete disclosure in the IT return and offered the surrendered amount for the purposes of tax.

11. Expln.5 and 5A are also an exception to the rule that when an income which is ultimately brought to tax is declared in a return of income, there can be no question of treating the Assessee as having “concealed particulars of income or furnished inaccurate particulars of income”. Those Explanations will also not apply in the present case because those Explanations are applicable only when there is a search u/s.132 of the Act and to a case of Survey u/s.133A of the Act.

12. For the reasons given above **we hold that there can be no justification for imposition of penalty on the income offered in the return of income by the Assessee, because there cannot be any penalty on income which is declared in a return of income, on the facts and circumstances of the present case.**

13. **The Hon’ble Delhi High Court in the case of Sas Pharmaceuticals (supra) and this Tribunal in the case of Vasavi Shelters (supra) have also taken the view as stated above.”**

From the above, it is evident that the facts of the present case are identical to the facts decided in the above discussed cases. Thus, we hold that the order of the CIT(A) in deleting the penalty cannot be faulted with. The grounds raised by the Revenue are dismissed.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced on this 01<sup>st</sup> day of February, 2019.

Sd/-

Sd/-

(विकास अवस्थी /VIKAS AWASTHY)  
न्यायिक सदस्य/JUDICIAL MEMBER

(डी. करुणाकरा राव/D. KARUNAKARA RAO)  
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 01<sup>st</sup> February, 2019  
Satisb

**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)-13, Pune
4. आयकर आयुक्त / The Pr.CIT-5, 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.

		Date	
1.	Draft dictated on	31-01-2019	Sr.PS
2.	Draft placed before author	01-02-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		