

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 290/PUN/2017

निर्धारण वर्ष / Assessment Year : 2006-07

M/s. Honeywell Automation India
Limited.
56 & 57, Hadapsar Industrial Estate,
Hadapsar, Pune-411 013.
PAN : AAAC3904F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-11, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Achuthan

Revenue by : Shri Abhijit Halder

सुनवाई की तारीख / Date of Hearing : 28.02.2019

घोषणा की तारीख / Date of Pronouncement : 28.02.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of Ld. CIT(Appeals)-1, Pune dated 24.10.2016 for the assessment year 2006-07 as per grounds of appeal on record.

2. The only grievance of the assessee is the levy of penalty by the Ld. Assessing Officer u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter

referred to as 'the Act') without recording satisfaction on the penalty imposed and without specifying the limb for which penalty has been imposed.

3. At the time of hearing, the Ld. AR of the assessee invited our attention to the assessment order at Para 3.2 where the Assessing Officer writes "Issue show cause notice u/s.271(1)(c) in respect of adjustment to the arm's length price". Thereafter, in Para 4 with regard to provision not added back, the Assessing Officer adds the amount of Rs.1,72,00,000/- since Dispute Resolution Panel (DRP) has confirmed the said addition. Herein also, no satisfaction of penalty proceedings was recorded by the Assessing Officer. The Ld. AR referred to the penalty order and demonstrated that in the said penalty order, the Assessing Officer sometimes wishes to impose penalty "for furnishing inaccurate particulars of income" by the assessee. Sometimes he wants to impose penalty "for concealment of income" by the assessee. Meaning thereby, he is not sure about which specific limb of section 271(1)(c), penalty has to be levied. The Ld. AR therefore, referred to the decision of Pune Bench of the Tribunal in assessee's own case in ITA Nos.405 & 407/PUN/2016 wherein exactly on the same facts and issue, relief was provided to the assessee by placing reliance on the judgment of Hon'ble Bombay High Court in the case of CIT Vs. Samson Perinchery reported as 392 ITR 4 (Bom).

4. The Ld. DR, per contra, has placed reliance on the order of the Sub-ordinate Authorities.

5. We have perused the case records and heard the rival contentions and have given thoughtful consideration to the documents on records. We observe that first of all in the assessment order, no satisfaction has been recorded by

the Assessing Officer regarding imposition of penalty u/s.271(1)(c) of the Act. That in the penalty order, the Assessing Officer is not clear as to which limbs of section 271(1)(c) of the Act penalty to be imposed . Sometimes, he is referring “for furnishing inaccurate particulars of income” while at times, he is imposing penalty “for concealment of income”. This exercise is not permitted within the ambit of Income Tax Law as observed in our decision in assessee’s own case in ITA No. 405 to 407/PUN/2016 (supra.). That on the issue, the Pune Bench of the Tribunal has held as follows:

“31..... It is settled law that while levying penalty for concealing of particulars of income, the AO has to record satisfaction and thereafter come to a finding in respect of one of the limbs which is specified under section 271(1)(c) of the Act. The first step is to record satisfaction while completing the assessment as to whether the assessee had concealed its income or furnished inaccurate particulars of income. Thereafter, notice u/s. 274 r.w.s 271(1)(c) of the Act is to be issued to the assessee. The Assessing Officer thereafter, has to levy penalty under section 271(1)(c) of the Act for non satisfaction of either of the limbs. While completing the assessment, the Assessing Officer has to come to a finding as to whether the assessee has concealed its income or furnished inaccurate particulars of income. The Hon'ble Bombay High Court in CIT Vs. Samson Perinchery (supra.) held that where initiation of penalty is one limb and the levy of penalty is on other limb, then in the absence of proper show cause notice to the assessee, there is no merit in levy of penalty.

32. Considering the facts of the present case in the light of the decision of Hon'ble Bombay High Court in the case of Samson Perinchery (supra), we are of the view that in the present case, the basic condition for levy of penalty has not been fulfilled and that the penalty order suffers from non-exercising of jurisdiction power and therefore penalty order cannot be upheld. We accordingly set aside the penalty order passed by AO. Thus, the ground of assessee is allowed.”

6. The Hon'ble Bombay High Court in the case of CIT Vs. Samson Perinchery (supra.) has held that the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under section 271(1)(c) of the Act, for initiation of penalty proceedings will not warrant/permit penalty being imposed for the other breach. This is more so, as an assessee would respond to the ground on which the penalty has been initiated/notice issued. It must, therefore, follow that the order imposing penalty has to be made only

on the ground of which the penalty proceedings has been initiated and it cannot be on a fresh ground of which the assessee has no notice. In this case the Hon'ble Bombay High Court accepted the view of the Hon'ble Karnataka High Court in the case of CIT Vs. Manjunath cotton and Ginning Factory reported as 359 ITR 565 wherein the Hon'ble Karnataka High Court has categorically held that the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or a case of furnishing inaccurate particulars of income. The Hon'ble Apex Court in the case of Ashok Pai Vs. CIT reported as 292 ITR 11 has held that concealment of income and furnishing of inaccurate particulars of income in section 271(1) (c) of the Act carry different meanings/connotations. The Hon'ble Gujarat High Court in the case of Manu Engineering reported as 122 ITR 306 and the Delhi High Court in the case of Virgo Marketing P. Ltd. reported in 171 taxman 156 has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non application of mind.

7. That the position of law is very clear as per aforesaid judicial pronouncements that before imposing penalty u/s.271(1)(c), the Assessing Officer should satisfy himself regarding the reasons for which he is imposing penalty and the same reasons should be reflected in the notice issued to the assessee so that he can be ready with his defense and statement of facts. Any ambiguity in the process is not warranted within the scope of Income Tax

Law. With these observations, we direct the Assessing Officer to cancel the penalty in the case of assessee and we thereby allow the appeal.

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

Order pronounced on 28th day of February, 2019.

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28th February, 2019.

SB

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

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

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	28.02.2019	Sr.PS/PS
2	Draft placed before author	28.02.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		