

common, consolidated order. Reference to the dates and figures in the narrative is for AY1992-93, with that for AY 1993-94 being in brackets. Assessment in the first instance was made at an income of Rs.2,79,000 (Rs.3,44,000), as against the returned income of Rs.23,000 (Rs.29,125), comprising Rs.11,000 (Rs.17,125) as profit of the assessee's trunk business, and the balance Rs.12,000 (Rs. 12,000) as rental income. Addition to the returned income was made by applying a net profit rate of eight per cent. on the assessee's turnover of Rs.31,49,384 (Rs.38,51,480) after rejecting the assessee's accounts u/s. 145(3) vide separate orders u/s. 143(3) r/w s. 147 dated 24.3.1998. The assessee had earlier per the original return (filed on 18.6.1993 for both the years) disclosed a turnover of Rs.1,37,000 for both the years (refer Ground 4), and the revised turnover was pursuant to a notice u/s. 148(1) on information with the Revenue that the assessee had made purchases for Rs.24,37,810 (Rs.32,40,083) during the relevant years from SICOP. Though the assessee admitted the undisclosed purchase transactions with SICOP, as well as the corresponding sales, the profit disclosed per the revised profit and loss account (P&L A/c) remained the same, i.e., as returned earlier, being Rs.11,000 (Rs.17,125). The assessee carried the matter in appeal, even as the assessments were also subject to revision u/s. 263. The first appellate authority dismissed the assessee's appeals vide consolidated order dated 15.02.1999. The Tribunal, in second appeal, set aside the order of the first appellate authority dated 15.02.1999 on the basis that the competent authority had already cancelled the assessments u/s. 263 of the Act, also cancelling the penalty u/s. 271(1)(c), since levied, with liberty to initiate penalty proceedings afresh, and directed fresh assessment for both the years (ITA No. 3662/Asr/2000, dated 30/4/2004).

Assessments were accordingly made afresh, enhancing the income to Rs.4,06,500 (Rs.4,26,700), and penalty proceedings u/s. 271(1)(c) initiated, though

the net profit rate of 8% on the revised turnover was not disturbed (vide separate orders u/s. 143(3) r/w s. 263, dated 22.03.2002). The said rate of profit stood reduced to 2.5% in first appeal, and the assessee did not carry the matter further. Penalty proceedings, initiated at the conclusion of the assessments, were proceeded with. Penalty was levied in respect of the additional profit on the undisclosed turnover (i.e., with reference to the original return); the assessee not furnishing any reply in response to the show cause notice u/s. 274 dated 06.8.2014. In appeal, it was contended that penalty could not be levied as the business profit was estimated. The Id. CIT(A) found no merit in the assessee's case as the assessee had suppressed his turnover. It was, therefore, a clear case of suppression of income. Aggrieved, the assessee is in second appeal.

3. I have heard the parties, and perused the material on record.

The assessee's case before the Tribunal was that no penalty could be levied on the undisclosed turnover, but only on the undisclosed income, which had in fact been estimated. That no penalty u/s. 271(1)(c) could be levied where the income is assessed on estimate basis is well-settled. The Id. counsel for the assessee, Sh. Arora, was posed a question by the Bench during hearing, i.e., whether the assessee had at any stage, i.e., in the quantum or the penalty proceedings, brought on record any material to show that he did not earn any profit whatsoever on the undisclosed turnover of Rs.30.12 lacs (Rs.37.14 lacs). This is as the revised P & L Account, furnished in the reassessment proceedings, exhibited the same profit as that returned originally by the assessee. The sales, as stated, are of the same goods as the assessee deals in in the normal course of his trade. The disclosed profit is Rs.11,000 (8.03%) and Rs. 17,125 (12.50%) for AY 1992-93 and AY 1993-94 respectively. He replied in the negative. Why, then, should not the income on the

additional, admitted turnover be assessed at the same rate, as indeed it was in the original assessment proceedings? The undisclosed purchases by the assessee for the relevant years are at Rs.24.38 lacs and Rs.32.40 lacs for AY 1992-93 and 1993-94 respectively. That is, as it appears, the undisclosed profit for the two years is in fact in a much higher sum of Rs.5.74 lacs (Rs.30.12 lacs - Rs.24.38 lacs) and Rs.4.74 lacs (Rs.37.14 - Rs.32.40 lacs) for the two consecutive years respectively. All these facts are on the basis of the material on record and, in fact, admitted. The income had, rather, been assessed a much lower rate of 2.5%, applied uniformly for both the manufacturing and trading turnover. How then, and on what basis, one wonders, the assessee states that he has not concealed particulars of income when he had concealed the turnover on the purchases from SICOP. In fact, penalty would arise even if the assessee had declared the same profit rate as on the disclosed turnover in the reassessment proceedings. This is as the same would only be upon detection by the Department. Reference in this regard be made to the decision in *Rajesh Chawla v. CIT* [2006] 203 CTR 209 (P&H) [154 Taxman 364], rendered relying on several decisions, including *CIT v. J.K.A. Subramania Chettiar* [1977] 110 ITR 602 (Mad), also quoting there-from. Further, that penalty is to be levied with reference to original return is, again, well settled (*CIT vs. Onkar Saran & Sons* [1992] 195 ITR 01 (SC)). The penalty imposed for both the years is, as afore-stated, at the minimum rate.

No interference, in my view, is accordingly called for. I decide accordingly.

4. In the result, the assessee's appeals are dismissed.

Order pronounced in the open court on March 29, 2019

Sd/-
(Sanjay Arora)
Accountant Member

Date: 29.03.2019

/PK/ Ps.

Copy of the order forwarded to:

- (1) The Appellant: Subash Chander, Prop. M/s. Subash Trunk Factory, Lambi Gali, Udhampur, J & K.
- (2) The Respondent: Income Tax Officer, Udhampur.
- (3) The CIT(Appeals), Jammu
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

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By Order