

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" 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.773/PUN/2017

निर्धारण वर्ष / Assessment Year : 2004-05

DCIT, Central Circle-2(3),
Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Ghanshyam J. Sukhwani (HUF),
32, Sukhwani Chamber,
Pimpri, Pune-411008.

PAN : AABHS9560G

.....प्रत्यर्थी / Respondent

Revenue by : Shri Pankaj Garg
Assessee by : Shri Vipin Gujrathi

सुनवाई की तारीख / Date of Hearing : 19.03.2019

घोषणा की तारीख / Date of Pronouncement : 04.04.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the Revenue against the order of CIT(A)-9,
Pune dated 22.12.2016 for the Assessment Year 2004-05.

2. The grounds raised by the Revenue are as under :-

"1) On the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 when the Assessing Officer has initiated penalty after observing that both the limbs of the default u/s 271(1)(c) were operative in the instant case.

2) On the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 when the assessee has concealed particulars of income, i.e. concealed true profit, by way of furnishing inaccurate particulars of income, i.e. shifting expenses of 80IB projects to non 80IB projects, which the Assessing Officer has correctly mentioned in the assessment order while initiating the penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961.

3) The order of the Ld. CIT(A) may be vacated and that of the Assessing Officer be restored.

4) *The appellant craves leave to add, alter, amend and modify any of the above grounds of appeal.”*

3. Briefly stated the relevant facts include that the assessee is engaged in the business of Promoter, Developers & Builders. The assessee filed the return of income declaring total income of Rs.18,69,220/-. At the end of the assessment, the Assessing Officer made four additions on different accounts. In all these additions, the Assessing Officer initiated penalty proceedings stating that **“Penalty proceedings u/s 271(1)(c) read with Explanation-1 of the I.T. Act, 1961 has therefore been initiated separately”** (para 2.9 of the assessment order). Similar is the language used by the Assessing Officer in respect of rest of the additions too.

4. In the penalty order, the Assessing Officer clearly stated that the levy of penalty for the default of **furnishing of inaccurate particulars of income** (para 9 of the penalty order).

5. The CIT(A), relying on the various decisions/judgements of the ITAT as well as the High Courts, directed the Assessing Officer to delete the said penalty as levied by the Assessing Officer.

6. Aggrieved with the said order of the CIT(A), the Revenue is in appeal before the Tribunal.

7. Before us, ld. AR for the assessee and ld. DR for the Revenue reiterated the submissions/arguments as made before the lower authorities. We have heard both the parties and perused the material available on record and find that this is a case where the Assessing Officer failed to record proper satisfaction while initiating and levying the penalty u/s 271(1)(c) of the Act. In this regard, we pursued the orders of

the Revenue authorities. On perusal of para 2.9 of the assessment order, we find the following is the reasons for initiation of penalty proceedings :-

“2.9 Penalty proceedings u/s 271(1)(c) read with Explanation-1 of the I.T. Act, 1961 has therefore been initiated separately.”

8. Further, we also perused the penalty order passed by the Assessing Officer on 26.03.2014. On perusal of para 9 of the penalty order, we find the following is the reasons for levy of penalty u/s 271(1)(c) of the Act :-

“9. concealed the particulars of income by furnishing inaccurate particulars of income.....”

9. The above extracts reveal that the Assessing Officer suffers from ambiguity in his mind while recording the satisfaction at the time of initiation of penalty proceedings u/s 271(1)(c) of the Act.

10. According to the Id. AR, the appeal of the Revenue shall have to be dismissed on the legal issue. Highlighting the legal requirement of making a specific reference to the specific limb of clause (c) of section 271(1) of the Act and relying on various binding judgments 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, Ld. Counsel demonstrated that the penalty levied by the Assessing Officer is unsustainable in law and the same is rightly deleted/cancelled by the CIT(A).

11. On the other hand, Id. DR for the Revenue heavily relied on the order Assessing Officer.

12. Considering the above, we are of the opinion that the legal requirement of making a clear cut reference to the applicable limb of

clause (c) of section 271(1) of the Act, is not met by the Assessing Officer while initiating and levying the penalty u/s 271(1)(c) of the Act. Thus, the satisfaction of the Assessing Officer suffers from ambiguity in his mind.

13. Therefore, we are of the opinion that, considering the above referred binding judgments, such penalty order is unsustainable in law legally. It is a settled legal proposition that 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. In view of the above deliberation on this issue, without going into the merits of the case, we are of the opinion that the order of the CIT(A) is reasoned one on this legal issue. Thus, we do not find any infirmity in the order of the CIT(A) on this legal issue. Accordingly, the grounds raised by the Revenue are dismissed on legal grounds.

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

Order pronounced on 04th day of April, 2019.

Sd/- (विकास अवस्थी / VIKAS AWASTHY) न्यायिक सदस्य/ JUDICIAL MEMBER पुणे / Pune; दिनांक / Dated : 04 th April, 2019.	Sd/- (डी. करुणाकरा राव/ D. KARUNAKARA RAO) लेखा सदस्य/ ACCOUNTANT MEMBER
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Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-9, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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