

आयकर अपीलिय 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.521/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Mahatma Phule Anusuchit Jati Jamati
Shetkari Sahakari Soot Girniniyamit,
Gat No.71A, Sharda Nagar, Sohale Road,
Wagholi, Solapur-413253.

PAN : AAAAM1598A

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-1,
Solapur.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Hari Krishan
Revenue by : Shri Pankaj Garg

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 assessee against the order of CIT(A)-7,
Pune dated 12.02.2018 for the Assessment Year 2014-15.

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

"1. On the facts and in the circumstances of the case and in law the learned Assessing Officer has erred in levying the penalty u/s 271(1)(c) a sum of Rs.52,62,990/- without specifying the limb under which penalty is levied and therefore entire penalty order is bad in law and deserves to be struck down.

2. On the facts and in the circumstances of the case and in law the Lower Authorities have erred in levying the penalty of Rs.52,61,990/- by invoking provisions of section 271(1)(c) of the Income Tax Act, 1961 by disregarding appellant's contention in this regard.

The appellant craves for leave to add, alter, modify, delete above ground of appeal before or at the time of hearing, in the interest of natural justice."

3. The assessee also raised the following additional grounds :-

“The penalty order passed u/s 271(1)(c) of the Income Tax Act levying penalty of Rs.52,61,990/- is ab-initio-void and unsustainable in law as;

(a) The Assessing Officer has failed to specify the charge/limb of section 271(1)(c) for which the penalty has been initiated. The Assessing Officer has not specified whether the penalty has been initiated for “Furnishing inaccurate particulars of income” or it has been initiated for “concealing the particulars of income”.

(b) The Assessing Officer has failed to delete/struck off the inappropriate portion/limb/charge of section 271(1)(c) of the Income tax Act from the proforma notice issued u/s 274 r.w.s. 271(1)(c) of the Income Tax Act.”

4. Briefly stated the relevant facts include that the assessee is a co-operative society and is engaged in the business of manufacturing of cotton yarn and running soot girni. The assessee filed the return of income declaring Nil income. During the assessment proceedings, the Assessing Officer noticed that the assessee shown net loss of Rs.5,37,51,942/- on turnover of Rs.29,62,34,344/-. All the purchases and sales were supported and expenses were vouched. The assessee maintained quantity-wise stock register and production record, lot-wise cotton register etc. On examination of the same, the Assessing Officer noticed that the assessee debited Rs.1,54,91,000/- towards government share capital fund. When the assessee was asked to explain the same, the assessee did not give any satisfactorily reply. Hence, the Assessing Officer initiated the penalty proceeding stating that **“Penal proceedings u/s 274 read with section 271(1)(c) of the Act, 1961 are being initiated separately on this point”** (para 7 of the assessment order).

5. In the penalty order, the Assessing Officer clearly stated that the levy of penalty for the default of **furnishing inaccurate particulars of income** (para 5.4 of the penalty order).

6. The CIT(A), relying on the various judgements of the High Court as well as the Supreme Court, confirmed the penalty as levied by the Assessing Officer. The contents of para 5.2 onwards of the appellate order are relevant in this regard.

7. Aggrieved with the said decision of the CIT(A), the assessee is in appeal before the Tribunal with the above extracted grounds/additional grounds.

8. 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 7 of the assessment order, we find the following is the reasons for initiation of penalty proceedings :-

“7.

Penal proceedings u/s 274 read with section 271(1)(c) of the I.T. Act, 1961 are being initiated separately on this point.”

9. Further, we also perused the penalty order passed by the Assessing Officer on 29.06.2017. On perusal of para 5.4 of the penalty

order, we find the following is the reasons for levy of penalty u/s 271(1)(c) of the Act :-

“5.4. furnishing inaccurate particulars of income.....”

10. 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.

11. According to the Id. AR, the order of the CIT(A) shall have to be set-aside 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 wrongly upheld by the CIT(A).

12. On the other hand, Id. DR for the Revenue heavily relied on the orders of the authorities below.

13. 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.

14. Therefore, considering the above referred binding judgments, we are of the view that such penalty 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 set-aside the order of the CIT(A) and direct the Assessing Officer to delete the entire penalty imposed by him. Accordingly, the grounds raised by the assessee are allowed on legal issue.

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

Order pronounced on 04th day of April, 2019.

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

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-7, Pune.
4. The CCIT, 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.