

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

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.896/PUN/2017

निर्धारण वर्ष / Assessment Year : 2008-09

Kirloskar Proprietary Ltd.
13A, Kirloskar Kisan Compound,
Karve Road, S. No.52/1, Kothrud,
Pune-411 038.
PAN : AAACK7506Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle 11(1), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 29.04.2019

घोषणा की तारीख / Date of Pronouncement : 30.04.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeals)-7, Pune dated 10.01.2017 for the assessment year 2008-09 as per the grounds of appeal on record.

2. The crux of the grievance of the assessee is with regard to the penalty levied u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as

'the Act') and also that the penalty has been levied on disallowance made u/s.14A of the Act.

3. At the time of hearing, the Ld. AR of the assessee vehemently argued that both in the assessment order as well as penalty order, the limb for which penalty is being imposed, has not been specified. Moreover, the notice u/s.274 r.w.s. 271(1)(c) of the Act is also not clear as to the limb on which penalty has to be levied on the assessee. The Ld. AR of the assessee relied on the present judgment of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Samson Perinchery reported as 392 ITR 4 (Bom.) wherein the Hon'ble Bombay High Court has followed the view of Karnataka High Court in the case of CIT Vs. Manjunath Cotton & Ginning Factory reported in 359 ITR 565(Kar.) wherein it was observed that the Hon'ble Supreme Court of India had held in T. Ashok Pai Vs. CIT reported as 292 ITR 11 (SC) that act of 'concealment of income' and act of 'furnishing inaccurate particulars' are two different things. Since where the notice does not specify for what penalty is being initiated, the levy of penalty was held to be invalid.

3.1 Furthermore, the Ld. AR contended that in so far as disallowance made u/s.14A of the Act, there are various decisions where it has been held that penalty cannot be imposed. Penalty is not leviable on disallowance made u/s.14A of the Act. The Ld. AR of the assessee has placed reliance on the decision in the case of M/s. 4A Financial Securities Limited Vs. DCIT in ITA No.1036/Del/2018 for the assessment year 2013-14 decided on 26.07.2018.

4. On the other hand, the Ld. DR conceded to the judicial pronouncements placed before us by the Ld. AR.

5. We have perused the case records and heard the rival contentions and have given thoughtful consideration to the judicial pronouncements on records. That in the penalty notice, the Assessing Officer is not clear as to which limb of section 271(1)(c) of the Act penalty to be imposed. The Ld. AR has pointed out before us that the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs. Samson Perinchery (supra.) has held that 'concealment of income' and 'furnishing of inaccurate particulars of income' in section 271(1)(c) carry different meanings/connotations and therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned u/s.271(1)(c) for initiation of penalty proceedings will not warrant/permit penalty being imposed for the other. 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. Therefore, where the Assessing Officer initiated penalty proceedings u/s.271(1)(c) for furnishing inaccurate particulars of income, the order imposing penalty for concealment of income was not valid. Reverting to the facts of the case the penalty notice is ambiguous so as it has not specified as to the charge for which penalty u/s.271(1)(c) of the Act is levied. If the notice does not specify the limb in which the penalty is being levied u/s.271(1)(c) of the Act, in such scenario, the imposition of penalty shall be void ab-initio.

Meaning thereby to our humble understanding, the assessee should be ready with his defense for which penalty has been levied by the Revenue Authority. It could not be generally done that for 'concealment of income' and also for 'furnishing inaccurate particulars of income', penalty has been levied. The limb for which penalty is levied, should be specific in the penalty notice allowing opportunity to the assessee to get ready with his defense. Further,

the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Samson Perinchery (supra.) as stated by the Ld. AR is the present judgment on the issue which is therefore, relevant.

5.1 Regarding imposition of penalty u/s.271(1)(c) of the Act on disallowance made u/s.14A of the Act, we have considered the decision of Delhi Bench of the Tribunal in the case of M/s.4A Financial Securities Limited Vs. DCIT (supra.) wherein the brief facts of the case are that the assessee filed return declaring total income of Rs.22,66,770/-. The Assessing Officer made addition of Rs.3,01,220/- under section 14A of the Act read with Rule 8D. Another addition of Rs.1,13,790/- was made towards claim for membership fees amounting to Rs.14,484/- and interest on late payment Rs.99,306/-. These two additions formed the bedrock of the edifice of instant penalty which came to be affirmed in the first appeal. The Delhi Bench of the Tribunal has deleted the penalty imposed on disallowance made u/s.14A of the Act by observing as under:

“3. I have heard both the sides and perused the relevant material on record. It is evident from the discussion made above that such penalty has been imposed on making disallowance of certain expenses. But for that, there is nothing on record to show that the assessee lodged bogus claims in respect of these expenses. That apart, the expenses were claimed by the assessee in a bona fide manner. The mere fact that the above disallowances have been made do not bring a case within the parameters set out in section 271(1)(c) of the Act. The Hon'ble Supreme Court in CIT vs. Reliance Petro Products Private Ltd. (2010) 322 ITR 158 (SC) has held that a mere making of a claim which is not sustainable in law, by itself will not attract penalty 271(1)(c) of the Income-tax Act, when the assessee furnishes all the relevant particulars in his return which are not found to be inaccurate. There is no dearth of decisions holding that penalty under section 271(1)(c) cannot be imposed on disallowance of expenses, which were not otherwise bogus. I, therefore, set aside the impugned order and direct to delete the penalty.”

Respectfully, following the directions and ruling of the Hon'ble Jurisdictional High Court, in Samson Perinchery (supra.) and decision of Delhi

Bench of the Tribunal, we set aside the order of the Ld. CIT(A) and direct the Assessing Officer to delete the penalty from the hands of the assessee.

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

Order pronounced on 30th day of April, 2019.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30th April, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-7, Pune.
4. The CIT-6, 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	29.04.2019	Sr.PS/PS
2	Draft placed before author	30.04.2019	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		