

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA Nos.2561 & 2562/PUN/2016
निर्धारण वर्ष / Assessment Years : 2004-05 & 2005-06

Shri Kasturilal Sardarilal Luthra,
Urmil, Shrin Meadows,
Gangapur Road,
Nashik – 422011

.... अपीलार्थी/Appellant

PAN: AAFPL4629P

Vs.

The Asst. Commissioner of Income Tax,
Central Circle 1, Nashik

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri M.K. Kulkarni
प्रत्यर्थी की ओर से / Respondent by : Ms. Shabhana Parveen

सुनवाई की तारीख / Date of Hearing : 25.04.2019	घोषणा की तारीख / Date of Pronouncement: 03.05.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

Both the appeals filed by assessee are against consolidated order of CIT(A)-12, Pune, dated 04.07.2016 relating to assessment years 2004-05 and 2005-06 against penalty levied under section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. Both the appeals of assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. Both the appeals have been filed after delay of 26 days. Since the issue involved is squarely covered and the delay is meager, hence we proceed to decide the present appeals by condoning the delay.

4. The assessee in ITA No.2561/PUN/2016, relating to assessment year 2004-05 has raised the following grounds of appeal:-

- 1) *On the facts and circumstances of the case and in law the Ld. CIT(A)-12, Pune was not justified in confirming the penalty levied by the A.O. under S. 271(1)(c) by dismissing the appeal of the assessee meaning thereby the penalty imposed was on deemed concealment which is not according to law. The penalty levied be quashed.*
- 2) *On the facts and circumstances of the case and in law Cl. (A) of Explanation 1 to S. 271(1)(c) was not attracted as explanation was submitted in response to show-cause notice u/s 274 of the Act. The Cl. (B) to that Explanation was also not attracted since all the facts relating to the same and material to the computation of his total income were already disclosed which is clear from the assessment order. The assessee was not able to substantiate since the original lender of money of Rs.4,21,000/- had already expired after the transaction. In such circumstances the penalty was not leviable. The penalty be quashed.*
- 3) *On the facts and circumstances of the case and in law the penalty proceedings were initiated without any specific charge against the assessee. That is pertaining to any specific limb of S.271(1)(c) of the Act. The Hon'ble Supreme Court while dismissing the SLP of the Department where High Court held that notice without mentioning whether for concealment or for furnishing inaccurate particulars of income was not sustained [386 ITR (St) 13]. By this the High Courts order attained finality and became binding precedent under Art 141 of the Constitution of India. In the circumstances the Ld. CIT(A) was not justified in confirming the penalty. The penalty levied be quashed.*
- 4) *On the facts and circumstances of the case and in law the Ld.CIT(A) was not justified in confirming the penalty order in spite of the argument that the same was barred by limitation. The Ld.CIT(A) rejected the contention of the appellant "without a speaking order". The penalty order be quashed as barred by limitation.*
- 5) *On the facts and circumstances of the case and in law the delay has occurred in filing of this appeal by 20 days. The reasons are not "without reasonable cause". The detailed sworn affidavit explaining the reasons for condonation of delay will be filed separately. In view of this the delay be condoned and appeal be admitted for adjudication in accordance with the provisions of law.*

5. The only issue raised in both the appeals is against levy of penalty under section 271(1)(c) of the Act.

6. Before going into the merits of said levy of penalty under section 271(1)(c) of the Act, we refer to the satisfaction recorded by the Assessing Officer while initiating penalty proceedings. The Assessing Officer during the course of assessment proceedings relating to assessment year 2004-05 at the end of para 9 of his order had held that *The assessee is deemed to have concealed the particulars of such income, therefore, penalty proceedings u/s. 271(1)(c) is separately initiated.* While levying penalty, the Assessing Officer at page 3 of penalty order had held that *the assessee has concealed particulars of its income by furnishing of inaccurate particulars of the same.* Further, the Assessing Officer during the course of assessment proceedings relating to assessment year 2005-06 at last page of his order had held that *For filing inaccurate particulars of income as discussed above, penalty proceedings u/s. 271(1)(c) is separately initiated.* While levying penalty, the Assessing Officer has held that *the assessee has concealed particulars of its income by furnishing of inaccurate particulars of the same.* In view thereof, where the Assessing Officer had initiated penalty proceedings for one limb and levies penalty for both limbs; we find no merit in levy of aforesaid penalty under section 271(1)(c) of the Act.

7. We find support from the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Shri Samson Perinchery (2017) 392 ITR 4 (Bom), wherein it was held that where there is no proper satisfaction for initiating penalty proceedings and in the absence of proper show cause notice to the assessee, there is no merit in levy of penalty. Accordingly, we delete the penalty levied

under section 271(1)(c) of the Act in both the appeals. The grounds of appeal raised by assessee in both the appeals are thus, allowed.

8. In the result, both the appeals of assessee are allowed.

Order pronounced on this 3rd day of May, 2019.

Sd/-
(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 3rd May, 2019.

GCVSR

Sd/-
(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-12, Pune;
4. The Pr.CIT Central, Nagpur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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