

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" 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 Nos.3106 to 3108/PUN/2017  
निर्धारण वर्ष / Assessment Years : 2002-03, 2004-05 & 2005-06

Rajendra Mithailal Agarwal,  
532, Phalke Road, Lokhand Bazar,  
Nashik-422001.

PAN : ADMPA6123D

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-1(1),  
Nashik.

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare,  
Revenue by : Shri Sanjeev Ghai

सुनवाई की तारीख / Date of Hearing : 13.03.2019

घोषणा की तारीख / Date of Pronouncement : 06.05.2019

आदेश / ORDER

**PER D. KARUNAKARA RAO, AM:**

There are three appeals under consideration by the assessee. All the three appeals of the assessee are against the consolidated orders of CIT(A)-I, Nashik dated 06.12.2013 for the assessment years 2002-03, 2004-05 and 2005-06 respectively. Since the facts and issues are common in all the three appeals, therefore, these were heard together and are being disposed of by this composite order.

**Preliminary Issue - Condonation of Delay**

2. Before us, at the outset, ld. Counsel for the assessee submitted that the above three appeals of the assessee could not be filed in time and the said appeals are now filed with the **delay of 1330 days**. In this

regard, ld. Counsel for the assessee filed an affidavit stating the reasons for non-filing the appeals of the assessee in time. For the sake of completeness, the relevant paras of the said affidavit are extracted hereunder :-

*“1. That I have filed appeals before Income Tax Appellate Tribunal Pune Bench for AY 2002-03, 2004-05 and 2005-06 on 28.12.2017.*

*2. That the due date of filing was 15.03.2014 and there is a delay of 1330 days.*

*3. That the delay has been cause due to **communication gap** between my consultant Shri Sharad Shah and myself. When I received the notice of prosecution on 6.11.2017 u/s 279 r.w.s. 276C for the above years, I came to know that matters of **penalty u/s 271(1)(c) have been decided** against me by CIT(A).*

*4. That I thereafter **applied for certified copy of the Order** on 13.11.2017 which were provided to me. Thereafter I sought proper advise and have filed appeal before Hon Tribunal.*

*5. That the delay has therefore caused for the reasons beyond my control. I therefore pray that keeping in view the reasons stated by me and in the interest of justice, the delay may kindly be condoned and the appeals my kindly be decided on merits.”*

3. Further, the assessee filed the evidence in support of obtaining the “certified copies” of the order of the CIT(A). On examining the same, we find the assessee filed the letters dated 13.11.2017 to the CIT(A)-1, Nashik asking for the certified copies of the order of the CIT(A). Notice of prosecution is prior to this date. These letters itself substantiated the contention of the assessee given in the affidavit explaining the reasons for the aforesaid delay. Thus, the alleged communication gap appears bona-fide.

4. Considering the above reasons given by the assessee in the affidavit, we find it is a fit case for condoning the delay. Therefore, we

condone the delay and proceed to adjudicate the appeals of the assessee in the following paragraphs.

5. Since the grounds are common in all the three appeals, therefore, for the sake of brevity, the grounds raised by the assessee in ITA No.3106/PUN/2017 are extracted hereunder :-

*“1. The learned CIT(A) erred in law and on facts in confirming penalty of Rs.1,60,044/- u/s 271(1)(c).*

*2. Whether on the facts and circumstances of the case, the notice for levy of penalty was defective in as much as no specific charge towards either concealing the particulars of income or furnishing of inaccurate particulars of income was made out in the notice and whether the penalty was levied on any specific charge as required under the law.*

*3. Whether on facts and in circumstances of the case, the learned A.O. has recorded satisfaction before initiation of penalty as required under the law.*

*4. The appellant craves leave to add, alter, modify or substitute any ground of appeal at the time of hearing.”*

6. Briefly stated the relevant facts include that the assessee is a partner in M/s. Balaji Re-Rolling Mills. The assessee filed the returns of income declaring total income of Rs.2,04,900/- for A.Y. 2002-03, Rs.1,46,740/- for A.Y. 2004-05 and Rs.1,90,190/- for A.Y. 2005-06 respectively. We perused the orders of the Assessing Officer for all the three assessment years and find the Assessing Officer did not bother to specify any limb in the assessment orders. For the sake of completeness, the relevant lines are extracted hereunder :-

*“6. .... I am satisfied that this is a fit case for initiation of penal proceedings u/s 271(1)(c).*

*7. .... I am satisfied that this is a fit case for penalty proceedings u/s 271(1)(c) are initiated separately.”*

7. From the above extracts, it is evident that no specific limb is mentioned by the Assessing Officer while recording the satisfaction. It is requirement of the judgemental law that the Assessing Officer is under obligation to specify the limb i.e. either the concealment of income or furnishing inaccurate particulars of income before initiating the penalty proceedings.

8. Further, we also examined the penalty orders for all the three assessment years under consideration and find the Assessing Officer levied the penalty for default of concealment of income. In this regard, we examined para 7 of the penalty order where the Assessing Officer levying the penalty for concealment of particulars of income by furnishing inaccurate particulars. For the sake of completeness, the said para 7 of the penalty order is extracted hereunder :-

*“7. In view of the forgoing discussions and the facts and circumstances of the case as discussed above, I am satisfied that the assessee, without reasonable cause and knowingly within the meaning of section 271(1)(c) of the IT Act, has **“concealed the particulars of income by furnishing inaccurate particulars”** and thereby committed the default within the meaning of explanation-5 to section 271(1)(c) of the I.T. Act and is therefore liable to penalty under Sec.271(1)(c) of the I.T. Act 1961.”*

9. From the above extracts both from the assessment order as well as the penalty order, we find the Assessing Officer not only failed to specify the limb giving legally sustainable “satisfaction” about the nature of default of the assessee in the matters of penalty but also failed to demonstrate that the Assessing Officer does not suffer from ambiguity in this regard. Therefore, the penalty initiated by the Assessing Officer in all the three appeals fall sought of the legal requirements.

10. According to the ld. 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).

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

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, 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 the legal issue.

14. Considering the above relief granted to the assessee on the legal issue, the adjudication of other grounds on merits become academic exercise. Accordingly, the other grounds raised by the assessee are dismissed as academic.

15. In the result, all the three appeals of the assessee are partly allowed.

Order pronounced on 06<sup>th</sup> day of May, 2019.

Sd/-  
(विकास अवस्थी /**VIKAS AWASTHY**)  
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-  
(डी. करुणाकरा राव/**D. KARUNAKARA RAO**)  
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 06<sup>th</sup> May, 2019.  
Sujeet

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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