

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “ए” पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “A”, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं / ITA No.408/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Pradeep Sweets Pvt. Ltd.,  
64/B, D-2, MIDC, Chinchwad,  
Pune – 411 019.

..... अपीलार्थी /  
Appellant

PAN : AABCP0354J.

बनाम v/s

The Dy.Commissioner of Income Tax,  
Circle – 10, Pune.

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri Vipin Gujarathi.

Revenue by : Shri Rajesh Gawali.

सुनवाई की तारीख / Date of Hearing : 07.05.2019	घोषणा की तारीख / Date of Pronouncement: 08.05.2019.
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आदेश / ORDER

**PER VIKAS AWASTHY, JM :**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) – 6, Pune dated 21.12.2016 for the assessment year 2012-13 vide which the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) has been upheld.

2. Shri Vipin Gujarathi appearing on behalf of the assessee submitted that a survey action u/s 133A was carried out on the assessee company and its group concerns on 12.07.2011. During the course of survey action, assessee disclosed additional income of Rs.45

lacs for the impugned assessment year. The assessee thereafter, in its return of income declared the additional income disclosed during survey action. The Assessing Officer (AO) while framing assessment u/s 143(3) of the Act initiated penalty proceedings u/s 271(1)(c) of the Act in respect of the aforesaid income disclosed in the return of income. The ld.A.R. submitted that the Hon'ble Delhi High Court in the case of CIT Vs. S.A.S. Pharmaceuticals reported as 335 ITR 259 has held that no penalty u/s 271(1)(c) for concealment is leviable where the assessee in his return of income has declared the income disclosed during survey action. Concealment of particulars of income or furnishing of inaccurate particulars of income by the assessee has to be in the income tax return. Since, the assessee has disclosed the additional income in return, there is no question of concealment of income or furnishing inaccurate particulars of income. The Pune Bench of Tribunal in various cases has been consistently taking a similar view and has deleted penalty levied u/s 271(1)(c) on such disclosures made in return of income after survey action. To further buttress his submissions, ld.A.R. placed reliance on the following decisions :

- i. Ashok S. Agarwal Vs. DCIT, Circle-8, Pune (ITA No.1227/PUN/2016).
- ii. Nandkishore Tulsidas Kathore Vs. ACIT Central, Cir 1, Nasik (ITA No.2174 to 2180/PUN/2014).

2.1. The ld.A.R. further contended that the penalty levied u/s 271(1)(c) is liable to be knocked down on account of different charges of Sec.271(1)(c) being invoked at the time of recording satisfaction and levy of penalty. The ld.A.R. pointed that at the time of recording

satisfaction for initiating penalty proceedings u/s 271(1)(c), the AO has mentioned concealment of income. However, while passing the order levying penalty, the AO has mentioned that the penalty is levied for furnishing inaccurate particulars of income. The manner in which penalty has been levied is contrary to the law laid down by the Hon'ble jurisdictional High Court in the case of CIT Vs. Samson Perinchery reported as (2017) 392 ITR 4 (Bom).

3. On the other hand, Shri Rajesh Gawali representing the Department vehemently defended the impugned order confirming levy of penalty u/s 271(1)(c) of the Act.

4. We have heard the submissions made by the representatives on rival sides and have perused the orders of authorities below.

5. Penalty u/s 271(1)(c) of the Act has been levied in respect of income declared by assessee in the return of income filed consequent to survey action. During survey, certain incriminating documents were found. The assessee disclosed additional income of Rs.45 lacs on account of unaccounted sales during the impugned assessment year. The additional income disclosed during survey was offered to tax by the assessee in return of income.

6. The penalty levied u/s 271(1)(c) of the Act is attracted where the assessee has concealed particulars of his income or has furnished inaccurate particulars of income in the return. Penalty u/s 271(1)(c) of the Act is not the consequence of additional income declared during survey. In the instant case, the AO during assessment proceedings

has accepted the return filed by the assessee with the additional income of Rs.45 lacs disclosed during survey action. Thus, there was no concealment of income or furnishing of inaccurate particulars of income in the return qua Rs.45 lacs. The Hon'ble Bombay High Court in the case of CIT Vs. S.A.S. Pharmaceuticals (supra) while dealing with a similar issue in a very explicit manner has explained the meaning of expression "in the course of any proceedings under this Act" used in Section 271(1)(c) of the Act. The Hon'ble Court deleted the penalty levied u/s 271(1)(c) on the disclosure made during survey and offered to tax in the return of income. The relevant extract of the judgment is reproduced herein below :

*"12. After considering the respective submissions of the learned counsel for the parties, we are of the view that the argument of the learned counsel for the assessee has to prevail as it carried substantial weight. It is to be kept in mind that Section 271(1)(c) of the Act is a penal provision and such a provision has to be strictly construed. Unless the case falls within the four-corners of the said provision, penalty cannot be imposed. Sub-section (1) of Section 271 stipulates certain contingencies on the happening whereof the AO or the Commissioner (Appeals) may direct payment of penalty by the assessee. We are concerned herewith the fundamentality provided in Clause (c) of Section 271 (1) of the Act, which authorizes imposition of penalty when the AO is satisfied that the assessee has either; (a) Concealed the particulars of his income; or (b) Furnished inaccurate particulars of such income.*

*13. It is not the case of furnishing inaccurate particular of income, as in the income tax return, particulars of income have been duly furnished and the surrendered amount of income was duly reflected in the income tax return. The question is whether the particulars of income were concealed by the assessee or not. It would depend upon the issue as to whether this concealment has reference to the income tax return filed by the assessee, viz., whether concealment is to be found in the income tax return.*

*14. We may, first of all, reject the contention of the learned counsel for the Revenue relying upon the expression "in the course of any proceedings under this Act" occurring in Sub-section (1) of Section 271 of the Act and contending that even during survey when it was found that the assessee had concealed the particular of his income, it would amount concealment in the course of any proceedings". The words "in the course of any proceedings under this Act" are prefaced by the satisfaction of the AO or the Commissioner of Income Tax (Appeals). When the survey is conducted by a survey team, the question of*

satisfaction of AO or the Commissioner (Appeals) or the Commissioner does not arise. We have to keep in mind that it is the AO who initiated the penalty proceedings and directed the payment of penalty. He had not recorded any satisfaction during the course of survey. Decision to initiate penalty proceedings was taken while making assessment order. It is, thus, obvious that the expression "in the course of any proceedings under this Act" cannot have the reference to survey proceedings, in this case.

15. It necessarily follows that concealment of particulars of income or furnishing of inaccurate particular of income by the as in the case of Commissioner of Income Tax, Delhi-I Vs. Mohan Das Hassa Nand 141 ITR 203 and in Reliance Petroproducts Pvt. Ltd. (supra), the Supreme Court has clinched this aspect, viz., the assessee can furnish the particulars of income in his return and everything would depend upon the income tax return filed by the assessee. This view gets supported by Explanation 4 as well as 5 and 5A of Section 271 of the Act as contended by the learned counsel for the Respondent.

16. No doubt, the discrepancies were found during the survey. This has yielded income from the assessee in the form of amount surrendered by the assessee. Presently, we are not concerned with the assessment of income, but the moot question is to whether this would attract penalty upon the assessee under the provisions of Section 271(1) (c) of the Act. Obviously, no penalty can be imposed unless the conditions stipulated in the said provisions are duly and unambiguously satisfied. Since the assessee was exposed during survey, may be, it would have not disclosed the income but for the said survey. However, there cannot be any penalty only on surmises, conjectures and possibilities. Section 271 (1) (c) of the Act has to be construed strictly. Unless it is found that there is actually a concealment or non-disclosure of the particulars of income, penalty cannot be imposed. There is no such concealment or non-disclosure as the assessee had made a complete disclosure in the income tax return and offered the surrendered amount for the purposes of tax."

7. The Pune Bench of Tribunal in the case of Ashok S. Agarwal Vs. DCIT (supra) and Nandkishore Tulsidas Kathore Vs. ACIT (supra) and in various other cases, deleted penalty levied u/s 271(1)(c) of the Act under similar circumstances by following the ratio laid down in the case of CIT Vs. S.A.S. Pharmaceuticals (supra). Thus, we find merit in the appeal of assessee. The penalty levied u/s 271(1)(c) of the Act on the amount disclosed in the return of income is unwarranted.

8. The ld.A.R. has further brought to our notice the discrepancy in mentioning different limbs of Sec.271(1)(c) of the Act while recording

satisfaction for initiating penalty proceedings and at the time of levying of penalty. A perusal of the assessment order shows that penalty proceedings u/s 271(1)(c) of the Act were initiated for concealing income, whereas, in penalty order the AO has levied penalty u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. This shows ambiguity in the mind of AO with regard to charge for levy of penalty u/s 271(1)(c) of the Act. The Hon'ble Jurisdictional High Court in the case of CIT Vs. Samson Perinchery (supra) has held "*that 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.*"

9. Thus, the charge for which penalty has been initiated u/s 271(1)(c) of the Act and the charge at the time of levy of penalty should be consistent. The penalty cannot be levied on a charge different from the one for which it is being initiated. Therefore, the penalty proceedings u/s 271(1)(c) of the Act are liable to be set aside on this ground as well.

10. In the result, the impugned order is set aside and the appeal of the assessee is allowed.

Order pronounced on Wednesday, the 08<sup>th</sup> day of May, 2019.

**Sd/-**  
**(R.S. SYAL)**  
**VICE PRESIDENT**

**Sd/-**  
**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**

पुणे Pune; दिनांक Dated : 08<sup>th</sup> May, 2019.

Yamini

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

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

आदेशानुसार/ BY ORDER

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