

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 No.358/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2009-10

Sunil Tukaram Zambare,  
Morgaon Road,  
Kasaba A/p Baramati,  
Pune-413102.

PAN : AAAPZ8814B

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-5(4),  
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Suhas Bora &  
Shri Sanket Bora  
Revenue by : Smt. Shabana Parveen

सुनवाई की तारीख / Date of Hearing : 05.07.2019  
घोषणा की तारीख / Date of Pronouncement : 10.07.2019

**आदेश / ORDER**

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

This appeal is filed by the assessee against the order of CIT(A)-7,  
Pune dated 25.10.2016 for the Assessment Year 2009-10.

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

"1. The ld CIT (A) has erred in confirming the penalty levied by the AO, without appreciating the fact that the AO while issuing notice U/Sec.271(1)(c) r.w.s.274 of the Act has not specified whether the same has been levied for furnishing of inaccurate particulars of income or for concealment of income and therefore same is bad in law.

2. The ld CIT (A) has erred in confirming the penalty of Rs. 15,38,496/- levied u/s 271(1)(c) by the AO only on the ground that the additions have been confirmed by CIT(A) and on the basis of conclusions drawn in the assessments proceedings without appreciating the facts of

*the case and submissions made by the appellant and without proving it to be false.*

3. *The ld CIT (A) while confirming the levy of penalty erred in stating that the appellant had declared additional income to explain the investment in flat, source of investment remained unexplained without appreciating the facts of the case and submissions made by the appellant.*

4. *The learned CIT(A) while confirming the levy of penalty of Rs. 15,38,496/- had erred in not appreciating the following important facts that:*

a) *The appellant had filed a revised return and offered additional income, which constitutes a voluntary and bonafide act.*

b) *Offering of the additional income which was remained to be disclosed in the return of income is a voluntary and bona fide offer and it is full and true disclosure of all the facts.*

c) *It was seen from the order that no penalty proceedings has been initiated u/s 271(1)(c) in the case of revised return income but has been initiated only on addition of Rs.1,35,384/-*

5. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

3. Briefly stated the relevant facts include that the assessee is engaged in the business of hiring of vehicles and trading in spare parts. The assessee filed the return of income declaring total income of Rs.9,51,980/-. At the end of the assessment u/s 143(3) of the Act, the Assessing Officer assessed the total income of the assessee after making certain additions on account of (i) undisclosed cash credits & others of Rs.38,16,182/- and (ii) disallowance u/s 14A of the Act of Rs.1,35,384/-. The Assessing Officer determined the total income of the assessee at Rs.54,20,540/-. Further, the Assessing Officer initiated the penalty proceeding stating that *“Penal proceedings are therefore initiated u/s 271B of the Act for not getting the books of account audited.”* (para 2.2 of the assessment order).

4. In the penalty order, the Assessing Officer clearly stated that the levy of penalty is for the default of “*furnishing inaccurate particulars of income/concealing income, .....*” (page 4 of the penalty order).

5. The CIT(A), relying on the various judgements of the High Court, confirmed the penalty as levied by the Assessing Officer. The contents of para 5.3 onwards of the appellate order are relevant in this regard.

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

7. According to the ld. AR, the order of the CIT(A) shall have to be set-aside on the legal issue relating to the ambiguity in the mind of the Assessing Officer while dealing with the initiation and levy of penalty. 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).

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

9. We heard both the parties on this legal issue and also perused the material available on record. We 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 2.2 of the assessment order, we find the following is the reasons for initiation of penalty proceedings :-

“2.2 .....

..... *Penal proceedings are therefore initiated u/s 271B of the Act for not getting the books of account audited.*”

10. Further, we also perused the penalty order passed by the Assessing Officer on 28.03.2014. On perusal of penalty order, we find the following is the reasons for levy of penalty u/s 271(1)(c) of the Act :-

“..... *furnishing inaccurate particular of income/concealing income.....*”

11. 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.

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 legal issue.

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

Order pronounced on 10<sup>th</sup> day of July, 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 : 10<sup>th</sup> July, 2019.  
Sujeet

**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, "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.