

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.1171/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2005-06

Chandu Laxman Chavan,  
C 18 & 20, Empress Garden,  
S. No. 64/14, Kawade Mala,  
Behind Empress Garden,  
Ghorpadi, Pune - 411001

PAN : AAMPC1316N

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Dy. Commissioner of Income Tax,  
Circle - 4, Pune

.....प्रत्यर्थी / Respondent

Assessee by : N O N E  
Revenue by : Mrs. Shabana Parveen &  
Shri Vishwas Mundhe

सुनवाई की तारीख / Date of Hearing : 04-07-2019  
घोषणा की तारीख / Date of Pronouncement : 12-07-2019

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal by the assessee is directed against the order of  
Commissioner of Income Tax (Appeals)-5, Pune dated 25-02-2016 for the

assessment year 2005-06, confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. The notice of appeal was sent to the assessee through RPAD which was duly served. The appeal was first listed for hearing on 03-07-2018. On the said date the appeal was adjourned to 28-08-2018 on the written request of assessee vide letter dated 23-06-2018. On 28-08-2018 one Shri Prabhaat Khatri appeared to represent the assessee and filed letter requesting adjournment on behalf of M/s. Ahuja Valecha & Associates LLP, Chartered Accountants, Authorized Representative of the assessee. On the request of the AR of the assessee, the appeal was adjourned to 12-11-2018. On the said date the Bench did not function. Consequently, the appeal was adjourned to 24-01-2019. None appeared to represent the assessee on the said date. Thereafter, the appeal was adjourned to 20-03-2019, 02-05-2019, 03-07-2019 and finally to 04-07-2019. Neither the assessee nor Authorized Representative of the assessee appeared before the Tribunal on any of the aforesaid dates. It seems that the assessee is not keen to pursue his appeal. Hence, we proceed to decide this appeal with the assistance of Id. DR and the material available on record.

3. The brief facts of the case as emanating from records are: The assessee filed his return of income for the impugned assessment year on 31-10-2005 declaring total income of Rs.27,60,110/-. The return of the assessee was processed u/s. 143(1) of the Act. Thereafter, the Assessing Officer issued notice u/s. 148 on 05-03-2009 to reopen the assessment for

assessment year 2005-06. In reassessment proceedings, the Assessing Officer made additions of Rs.46,66,665/- on account of amount received by the assessee by way of Sales Tax Exemption claimed as capital receipts. The Assessing Officer held the same to be Revenue receipt. Penalty proceedings u/s. 271(1)(c) of the Act were initiated by the Assessing Officer in respect of aforesaid addition. The Assessing Officer vide order dated 24-01-2014 levied penalty of Rs.15,48,361/- u/s. 271(1)(c) of the Act. The assessee filed appeal before the Commissioner of Income Tax (Appeals) assailing levy of penalty. However, the assessee was unsuccessful before the First Appellate Authority, hence, the present appeal before the Tribunal.

4. Mrs. Shabana Parveen along with Shri Vishwas Mundhe representing the Department vehemently defended the order of Commissioner of Income Tax (Appeals) in confirming penalty levied u/s. 271(1)(c) of the Act. The ld. DR submitted that the assessee has failed to offer sales tax incentive to tax by misstating the same to be on capital account. The assessee had filed appeal against the additions before the Commissioner of Income Tax (Appeals) and Tribunal. The appeal of assessee at first appellate stage and second appellate stage were dismissed. Hence, the addition made by Assessing Officer got confirmed. The ld. DR prayed for dismissing the appeal of assessee.

5. We have heard the submissions made by the ld. DR and have examined the orders of authorities below. A perusal of assessment order shows that the Assessing Officer while recording satisfaction for initiating

penalty has mentioned both the limbs of section 271(1)(c) of the Act. The Assessing Officer has recorded satisfaction by observing as under :

*“In view of the above discussion, the amount received by the assessee on transfer of Sales Tax Entitlement Exemption claimed at as capital receipt amounting to Rs.46,66,665/- is charged to tax accordingly. **Penalty Proceedings u/s. 271(1)(c) for furnishing of inaccurate/concealment particulars of income are being initiated separately.**”*

6. While levying penalty, the Assessing Officer invoked only the charge of “furnishing inaccurate particulars of income”. It is evident that while recording satisfaction the Assessing Officer was not clear in his mind as to which charge u/s. 271(1)(c) is to be invoked for initiating penalty. The ambiguity in the mind of Assessing Officer with regard to charge u/s. 271(1)(c) for levy of penalty is evident writ large.

7. The Hon’ble Karnataka High Court in the case of Commissioner of Income Tax Vs. Manjunatha Cotton and Ginning Factory reported as 359 ITR 565 has held the “*assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty should be imposed to the assessee*”. The manner in which the Assessing Officer has initiated penalty in the instant case clearly shows vagueness in the mind of Assessing Officer with regard to the charge to be invoked for levy of penalty u/s. 271(1)(c) of the Act. Thus, the satisfaction recorded by the Assessing Officer falls short of legal requirement as envisaged by the Hon’ble High Court. The Tribunal in various decisions has held such recording of satisfaction as unsustainable in the eye of law. Thus, we are of considered opinion that the penalty proceedings in this case are liable to be set aside

on account of vagueness and ambiguity in recording of satisfaction. We hold and direct accordingly. The impugned order is set aside and the appeal of assessee is allowed.

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

Order pronounced on Friday, the 12<sup>th</sup> day of July, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 12<sup>th</sup> July, 2019  
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-5, Pune
4. The Pr. Commissioner of Income Tax-4, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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