

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.880 to 885/PUN/2017  
निर्धारण वर्ष / Assessment Years : 2005-06 to 2010-11

Arvind Janardan Pandey,  
22-C, Diamond Park, Park Street,  
Kalewadi Phata, Wakad,  
Pune-411057

PAN : AARPP2115Q

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-8(3),  
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Arvind J. Pandey  
Revenue by : Shri Rajesh Gawali

सुनवाई की तारीख / Date of Hearing : 11.07.2019  
घोषणा की तारीख / Date of Pronouncement : 01.08.2019

आदेश / ORDER

PER BENCH :

There are **six appeals** under consideration. All these six appeals are filed by the assessee against the common orders of CIT(A)-9, Pune dated 25.01.2017 for the Assessment Years 2005-06 to 2010-11 respectively. Since the facts and issues are common in all these six appeals, therefore, these were heard together and disposed of by this composite order.

2. Since the issues involved in all these six appeals are common, the appeal in ITA No.880/PUN/2017 for the assessment year 2005-06 taken as the lead case for adjudication.

**ITA No.880/PUN/2017 – A.Y. 2005-06**

3. The grounds raised by the assessee in this appeal are as under :-

“1. Commissioner Appeals has erred in confirming the Penalty levied by Assessing Officer of Rs.12,36,651/-. Same may please be cancelled.

2. Appellant prays to hold that Penalty Order and Notices u/s 271(1)(c) are bad in law.

3. Appellant prays for just and equitable relief.

4. Without prejudice to grounds and without accepting that Penalty is leviable. If it is held leviable, CIT(A) should have excluded the amount of relief granted by ITAT and Income returned u/s 153A.

5. Appellant prays to add, alter, amend and or withdraw the grounds during appellant proceedings.”

4. Briefly stated the relevant facts include that the assessee is an Admission Agent, who arranges for admission out of management quota for professional courses. A search and seizure action was carried on the assessee on 07.08.2009 and notice u/s 153A of the Act was issued to the assessee on 10.02.2010. The assessee did not file the return of income in response to the said notice u/s 153A of the Act. Thereafter, the assessment was completed by the Assessing Officer u/s 143(3) r.w.s. 153A of the Act and assessed the total taxable income of the assessee at Rs.65,00,000/-. Further, the Assessing Officer initiated the penalty proceeding stating that “..... concealment of income or furnishing inaccurate particulars of such income .....” (para 19 of the assessment order).

5. In the penalty order, the Assessing Officer clearly stated that the levy of penalty is for the default of “..... concealed the income and

*furnished the inaccurate particulars of income .....*” (para 19 of the penalty order).

6. 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.

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

8. 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).

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

10. 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 19 of the assessment order, we find the following is the reasons for initiation of penalty proceedings :-

*“19. .... concealment of income or furnishing inaccurate particulars of such income .....”*

11. Further, we also perused the penalty order passed by the Assessing Officer on 30.03.2015. On perusal of penalty order, we find the following is the reasons for levy of penalty u/s 271(1)(c) of the Act :-

*“19. .... concealed the income and furnished the inaccurate particulars of income .....”*

12. 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.

13. 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.

14. 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 legal ground raised by the assessee is allowed.

15. Considering the relief to the assessee on legal issue, the adjudication of the other grounds on merits of penalty becomes an academic exercise only. Accordingly, the said grounds are dismissed as academic.

16. In the result, the appeal of the assessee for the assessment year 2005-06 is allowed.

17. We shall now take up the rest of the **5 appeals** for the assessment years 2006-07 to 2010-11. Issues are identical in these five appeals of the assessee.

**ITA Nos.881 to 885/PUN/2017 (5 Appeals)**  
**A.Ys. : 2006-07 to 2010-11**

18. Considering the commonality of the issues relating to satisfaction while initiated the penalty proceedings as well as the arguments of the Id. Counsel for the assessee, we are of the opinion, legal issues raised in the rest of 5 appeals of the assessee for the assessment years 2006-07 to 2010-11 should also be allowed in favour of the assessee. Accordingly,

the relevant legal grounds of these 5 appeals for the assessment years 2006-07 to 2010-11 stands allowed.

19. Considering the relief to the assessee, the adjudication of other grounds on merits becomes an academic exercise only. Accordingly, the other grounds are dismissed as academic.

20. To sum up, all the **six appeals of the assessee are partly allowed.**

Order pronounced on 01<sup>st</sup> day of August, 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 : 01<sup>st</sup> August, 2019.

*Sujeet*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-9, Pune.
4. The Pr.CIT-5, 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.