

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री अनिल चतुर्वेदी, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI ANIL CHATURVEDI, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1539/PUN/2017

निर्धारण वर्ष / Assessment Year : 2009-10

Vitthal Manik Dhawale,
S. No. 95, Gat No. 669,
Moshi Alandi Road, Moshi,
Pune - 412105

PAN : AANPD1485D

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
Circle - 8, Pune

.....प्रत्यर्थी / Respondent

Assessee by : S/Shri Suhas Bora & Sanket Bora
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 29-07-2019

घोषणा की तारीख / Date of Pronouncement : 01-08-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-9, Pune dated 31-03-2017 for the assessment year 2009-10 confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. Shri Suhas Bora appearing on behalf of the assessee submitted at the outset that in assessment proceedings, the Assessing Officer had made addition of Rs.1,67,42,000/- on account of unexplained cash deposits in saving bank account of assessee. Penalty proceedings u/s. 271(1)(c) of the Act were initiated on the aforesaid addition. The Assessing Officer vide order dated 30-03-2015 levied penalty of Rs.57,14,633/- on the said addition. The assessee filed appeal against the aforesaid addition. The First Appellate Authority upheld the same. In second appeal before the Tribunal, the assessee succeeded. The Tribunal vide order dated 05-04-2018 set aside the issue back to the file of Assessing Officer. Thus, the entire addition was knocked down by the Tribunal. The ld. AR furnished a copy of the order of Tribunal in ITA No. 980/PUN/2014 for assessment year 2009-10 decided on 05-04-2018.

3. Shri Pankaj Garg representing the Department fairly admitted that the Tribunal in quantum appeal by the assessee has restored the issue back to the file of Assessing Officer. The ld. DR submitted that the present penalty appeal can also be restored to the file of Assessing Officer.

4. We have heard the submissions made by representative of rival sides and have perused the orders of authorities below. The assessee is in appeal against levy of penalty u/s. 271(1)(c) of the Act. The Co-ordinate Bench of Tribunal in quantum appeal by the assessee in ITA No. 980/PUN/2014 (supra) has restored the issue back to the file of Assessing Officer for de-novo adjudication. Since, the substratum for levy of penalty has eroded, the penalty u/s. 271(1)(c) of the Act would not survive.

Accordingly, the impugned order is set aside and the appeal of assessee is allowed.

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

Order pronounced on Thursday, the 01st day of August, 2019.

Sd/- (अनिल चतुर्वेदी / Anil Chaturvedi) लेखा सदस्य / ACCOUNTANT MEMBER	Sd/- (विकास अवस्थी / Vikas Awasthy) न्यायिक सदस्य / JUDICIAL MEMBER
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पुणे / Pune; दिनांक / Dated : 01st August, 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)-9, Pune
4. The Pr. Commissioner of Income Tax-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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