

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

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील स० / ITA No.1733/PUN/2018

निर्धारण वर्ष / Assessment year : 2000-01

Omprakash B. Tiwadi,
7/8 Budhwar Peth
Solapur.

..... अपीलार्थी /
Appellant.

PAN : AAJPT6339E.

बनाम v/s

The Asst.Commissioner of Income Tax,
Circle - 1, Solapur.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri M.K. Kulkarni.

Revenue by : Shri M.K. Verma.

सुनवाई की तारीख / Date of Hearing : 15.07.2019	घोषणा की तारीख / Date of Pronouncement: 01.08.2019
---	---

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) - 9, Pune dated 30.07.2018 for the assessment year 2000-01.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual having income from share profit, house property and interest income. Assessee filed his return of income for A.Y. 2000-01 declaring loss of Rs.1,18,512/-. The return was initially processed u/s 143(1) of the Act on 25.02.2002. Subsequently, the case

was re-opened by issuing notice u/s 148 of the Act and thereafter assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dt.23.09.2004 and the total income was determined at Rs.3,37,540/-. AO noted that assessee had claimed interest expenses of Rs.33,232/- in the revised income as against Rs.5,04,425/- as claimed in the original return of income. AO noted that the claim of interest of Rs.33,232/- payable to M/s. S.B. Tiwadi seems to be allowable as against Rs.5,04,425/- which was claimed with the original return. He therefore concluded that assessee had furnished inaccurate particulars of income in the original return of income to the extent of Rs.4,71,203/- (Rs.5,04,435/- - Rs.33,232/-) of the aforesaid amount and accordingly vide order dt.18.07.2007 passed u/s 271(1)(c) of the Act levied penalty of Rs.1,26,900/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order 30.07.2018 (in appeal No.PN/CIT(A)-7/490/2014-15) upheld the order of AO. Aggrieved by the order of Ld.CIT(A), assessee is now before us and has raised the following grounds :

"1. On the facts and in the circumstances of the case and in law and as a result of Hon'ble Tribunal order in ITA/604-A/Pn/2006 in quantum appeal dt. 31-10-2006 the cause for levy of penalty under S. 271(1)(c) of the Act was removed. The penalty levied by A. O. and confirmed by Ld. CIT(A) is not sustainable. The same be quashed.

2. On the facts and in the circumstances of the case and in law the income finality assessed after giving effect to the Hon'ble Tribunal Order in sustain appeal was Rs. 1,16,010/- then by no stretch of imagination the penalty of Rs. 1,26,896/- cannot be levied by the A. O. which itself is in excess of the assessee income. No proper application of mind is visible of the A. O. the penalty levied be quashed.

3. On the facts and in the circumstances of the case and in law and perusal of show-cause notice dt. 24-09-2004 issued u/s 274 of the Act itself reveals that there is not specific charge of either 'concealment' or 'furnishing of inaccurate particulars of income'. On assessment order also the penalty proceedings have not been initiated for any 'specific charge' which shows "penal proceedings u/s 274 r.w.s. 271(1)(c) are initiated separately" and at the end it says "issue notice for furnishing inaccurate particulars of income". This is contrary to settled law. The penalty levied be quashed.

4. On the facts and in the circumstances of the case and in law the penalty proceedings completed vide order dt. 18-07-2007 are barred by limitation. The penalty levied is not sustainable. It be quashed.”

3. Before us, Ld.A.R. submitted that though the assessee has raised several grounds but all the grounds are inter-connected and the sole controversy is with respect to levy of penalty u/s 271(1)(c) of the Act.

4. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that in the original return of income that was filed assessee had claimed interest expenses of Rs.4,04,435/- but subsequently in the return of income filed in response to notice u/s 148 of the Act, assessee had claimed interest of Rs.33,232/-. He further submitted that during the course of assessment proceedings all the information and explanations which was called for by the AO were submitted. He further submitted that there is no material on record which could demonstrate that the explanation given by the assessee was false or that the assessee had concealed the particulars of income. He further submitted that mere making of the claim which is not sustainable in law and would not amount to furnishing inaccurate particulars of income and such claim made in the return cannot amount to inaccurate particulars. He therefore submitted that the penalty be deleted. Ld.DR, on the other hand, supported the orders of AO and ld.CIT(A).

5. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to levy of penalty u/s 271(1)(c) of the Act.

6. The necessary ingredients for attracting Explanation-1 to Section 271(1)(c) are that: (i) the person fails to offer the explanation, or (ii) he

offers the explanation which is found by the AO or the Id.CIT(A) or the Id.CIT to be false, or (iii) the person offers explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same have been disclosed by him. If the case of any assessee falls in any of these three categories, then according to the deeming provision provided in Explanation-1 to Section 271(1)(c) the amount added or disallowed in computing the total income shall be considered as the income in respect of which particulars have been concealed, for the purposes of clause (c) of Section 271(1), and the penalty follows. On the other hand, if the assessee is able to offer an explanation, which is not found by the authorities to be false, and assessee has been able to prove that such explanation is bona fide and that all the facts relating to the same have been disclosed by him, then in that case penalty shall not be imposed.

7. A case for levy of penalty for concealment of income has to be evaluated in terms of provisions of Explanation 1 to Section 271(1)(c), as per which if in relation to any addition in the assessment, the assessee offers no explanation or offers explanation which is found to be false or is not able to substitute the explanation and is also not able to prove that the explanation is bonafide, the addition made would amount to concealment of particulars, of income. It is well settled that the parameters of judging the justification for addition made in the assessment case of the assessee is different from the penalty imposed on account of concealment of income or filing inaccurate particulars of income and that certain disallowance/addition could legally be made in the assessment proceedings on the preponderance of probabilities but no penalty could be imposed u/s. 271(1)(c) of the Act on the preponderance of probabilities

and Revenue has to prove that the claim of expenses by the assessee was not genuine or was inflated to reduce its tax liability. Further merely because additions have confirmed in appeal or no appeal has been filed by assessee against additions made, it cannot be the sole ground for coming to the conclusion that assessee has concealed any income. Before us, Ld.A.R. has given the reasons and submissions have not been controverted by the Revenue. Further, there is nothing on record to demonstrate that assessee had filed inaccurate particulars of income or had concealed the particulars of income. We further find that Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd. reported at (2010) 322 ITR 158 (SC) held that a mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars.

8. Considering the aforesaid facts and relying on the foresaid judgment of the Hon'ble Apex Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd. (supra), we are of the view that in the present case no case for levy of penalty u/s. 271(1)(c) of the Act has been made out. We thus direct the deletion of penalty u/s. 271(1)(c) of the Act. Thus, the grounds of assessee are allowed.

9. **In the result, the appeal of assessee is allowed.**

Order pronounced on 1st day of August, 2019.

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 1st August, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-9, Pune.
4. Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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