

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.558 & 561/PUN/2017  
निर्धारण वर्ष / Assessment Years : 2007-08 & 2012-13

ITO, Ward-1(4),  
Nashik.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Manu Re-Rolling Mill Pvt. Ltd.,  
C/o. Pritesh Shah, G-3, Ground Floor,  
Baroda Street, Masjid (E),  
Mumbai-400009.

PAN : AABCM8870C

.....प्रत्यर्थी / Respondent

Revenue by : Shri N. Ashok Babu  
Assessee by : None

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

आदेश / ORDER

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

There are two appeals under consideration filed by the Revenue. Both the appeals are against the common orders of CIT(A)-2, Nashik dated 06.12.2016 for the Assessment Years 2007-08 & 2012-13 respectively. Since the facts and issues involved in both the appeals of the Revenue are common, therefore, these were heard together and are being disposed of by this composite order.

2. In both the appeals of the Revenue, there is none to represent the assessee despite the service of notice by the ITAT. Therefore, both the appeals are being decided on the basis of material available on record and after hearing the ld. DR for the Revenue.

3. Since the issues are common in both the appeals, the appeal in ITA No.558/PUN/2017 for the assessment year 2007-08 taken as the lead case for adjudication.

**ITA No.558/PUN/2017 – A.Y. 2007-08**

4. The grounds raised by the Revenue are as under :-

*“1.1 Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the full penalty of Rs.42,29,798/- imposed by the AO.*

*1.2 Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the penalty in respect of addition of Rs. 1,25,66,245/- on account of undisclosed sale.*

*1.3 Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the full penalty in respect of addition on account of undisclosed sale confirmed to the extent of Rs.8,79,637/-.*

*2. The Order of the CIT(A) may be vacated and that of the Assessing Office may be restored.*

*3. The appellant crave leave to add, amend, alter or delete any grounds of appeal.”*

5. Briefly stated the relevant facts include that the assessee is engaged in the business of manufacturing of Ingots/Billets. The assessee filed the return of income declaring loss of Rs.6,18,267/-. At the end of the assessment u/s 144 r.w.s. 147 r.w.s. 143(3) of the Act, the Assessing Officer, after detailed discussion, assessed the total income of the assessee at Rs.1,19,47,978/- by making certain addition on account of undisclosed sale of Rs.1,25,66,245/-. Further, the Assessing Officer initiated the penalty proceeding stating that *“..... For concealing particulars of income penalty proceedings u/s 271(1)(c) is being separately initiated”*. (para 5 of the assessment order).

6. In the penalty order, the Assessing Officer clearly stated that the levy of penalty is for the default of “..... *furnished inaccurate particulars of income and concealed the income within the meaning of section 271(1)(c) read with Explanation 1*”. (para 11 of the penalty order).

7. The CIT(A), after considering the written submission of the assessee and relying on the decisions cited in the said written submission of the assessee, restricted the penalty to the tune of Rs.1,69,192/- as against the penalty of Rs.42,29,798 levied by the Assessing Officer and partly allowed the appeal of the assessee. The contents of para 8 of the appellate order are relevant in this regard.

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

9. From the material available on record, it is seen that the order of the CIT(A) is reasoned one 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, we are of the opinion, the penalty levied by the Assessing Officer is unsustainable in law and the same is rightly restricted by the CIT(A).

10. Ld. DR for the Revenue heavily relied on the assessment order and the penalty order.

11. Considering the material available on record, we find that this is a case where the Assessing Officer failed to record proper and valid satisfaction while initiating and levying the penalty u/s 271(1)(c) of the Act. In this regard, we perused the orders of the Revenue authorities. On perusal of para 5 of the assessment order, we find the following is the reasons for initiation of penalty proceedings :-

*“05. .... For concealing particulars of income penalty proceedings u/s 271(1)(c) is being separately initiated.”*

12. Further, we also perused the penalty order passed by the Assessing Officer on 29.09.2014. On perusal of para 11 of the penalty order, we find the following is the reasons for levy of penalty u/s 271(1)(c) of the Act :-

*“11. .... furnished inaccurate particulars of income and concealed the income within the meaning of section 271(1)(c) read with Explanation 1”.*

13. 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.

14. 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.

15. 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 affirm 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 Revenue is dismissed.

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

17. In the result, the appeal of the Revenue for the assessment year 2007-08 is dismissed.

18. We shall now take up the appeal for the assessment year 2012-13. Issues are identical in this appeal of the Revenue.

**ITA No.561/PUN/2017 – A.Y. 2012-13**

19. Considering the commonality of the issues relating to satisfaction while initiated the penalty proceedings, we are of the opinion, the issues raised by the Revenue in this appeal for the assessment year 2012-13 should also be dismissed. This is also the case of recording invalid and improper satisfaction *qua* the ambiguity in the mind of the Assessing Officer. Accordingly, the relevant grounds for the assessment year 2012-13 stands dismissed.

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

21. In the result, the appeal of the Revenue for the assessment year 2012-13 is dismissed.

22. To sum up, both the appeals of the Revenue are dismissed as above.

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)-2, Nashik.
4. The CCIT, Nashik.
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.