

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.1027/PUN/2017

निर्धारण वर्ष / Assessment Year : 2011-12

Rajendra Gaikwad,  
M/s. Shah Khandelwal Jain &  
Associates Chartered Accountants,  
Level 3, Riverside Business Bay,  
Plot No.84, Wellesley Road, Near RTO,  
Pune-411001.

PAN : AIMPG7188F

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-8,  
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rajeev Thakkar  
Revenue by : Shri Vishwas Mandhe

सुनवाई की तारीख / Date of Hearing : 22.07.2019

घोषणा की तारीख / Date of Pronouncement : 01.08.2019

**आदेश / ORDER**

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

This appeal is filed by the assessee against the order of CIT(A)-9,  
Pune dated 13.01.2017 for the Assessment Year 2011-12.

2. The grounds raised by the assessee are as under :-

"1. That on the facts and circumstances prevailing in the case and as per the provisions and scheme of the Income-tax Act, 1961 ("the Act"), the Ld. Commissioner of Income-tax (Appeals) ("Ld. CIT(A)") erred in confirming the validity of the notice under section 271(1)(c) r.w.s. 274 of the Act issued by the Ld. Assessing Officer ("Ld. AO"). Just and proper relief be granted to the appellant in this respect.

2. That on the facts and circumstances prevailing in the case and as per the provisions and scheme of the Act, the Ld. CIT(A) erred in confirming the penalty under section 271(1)(c) considering the explanation and legal

*submission made by the Appellant before him as additional evidence. It be held that the Ld. CIT(A) has made gross error while disposing off the additional ground. Just and proper relief be granted to the appellant in this respect.*

3. *Without prejudice to Ground 1 and 2, on the facts and circumstances prevailing in the case and as per the provisions and scheme of the Act, the Ld. CIT(A) erred in confirming the penalty levied by Ld. AO under section 271(1)(c) of the Act. Just and proper relief be granted to the appellant in this respect.*

4. *That the Appellant prays to be allowed to add, amend, modify, rectify, delete, raise any grounds of appeal at the time of hearing.”*

3. Briefly stated the relevant facts include that the assessee is engaged in the business of land developer and commission agent. The assessee filed the return of income declaring total income of Rs.28,41,902/-. At the end of the assessment u/s 143(3) of the Act, the Assessing Officer assessed the total income of the assessee after making addition on account of undisclosed income of Rs.90,81,250/- and determined the total income of the assessee at Rs.1,19,23,150/-. Further, the Assessing Officer initiated the penalty proceeding stating that “*Since the assessee has concealed particulars of income, the penalty under section 271(1)(c) is initiated*”. (para 2 of the assessment order).

4. In the penalty order, the Assessing Officer clearly stated that the levy of penalty is for the default of “*concealment of income and the assessee has furnished inaccurate particulars thereof as per explanation 1 to section 271(1)(c) of the I.T. Act*” (para 05 of the penalty order).

5. 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.

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

7. 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).

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

9. 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 perused the orders of the Revenue authorities. On perusal of para 2 of the assessment order, we find the following is the reasons for initiation of penalty proceedings :-

“2. ....

..... Since the assessee has concealed particulars of income, the penalty under section 271(1)(c) is initiated.”

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

*“05 ..... concealment of income and the assessee has furnished inaccurate particulars thereof as per explanation 1 to section 271(1)(c) of the I.T. Act.”*

11. 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.

12. 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.

13. 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 grounds raised by the assessee are allowed on legal issue.

14. In the result, the appeal of the assessee is 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.