

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITAs No. 3309 & 3310/Mum/2018

(निर्धारण वर्ष / Assessment Years 2007-08 & 2011-12)

Periwinkle Fashions Pvt. Ltd. 403, Akroti Star, Centre Road, MIDC, Andheri (East), Mumbai-400 093	Vs.	The Dy. Commissioner of Income-tax, Circle 10(3)(2) Room No. 509, Aayakar Bhavan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AADCP3365M		

अपीलार्थी की ओर से / Appellant by	:	Shri Mukund Bakshi, AR
प्रत्यर्थी की ओर से / Respondent by	:	Ms. Kusum Bansal, DR

सुनवाई की तारीख / Date of hearing:	25.06.2019
घोषणा की तारीख / Date of pronouncement :	19.07.2019

आदेश / O R D E R

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

This two appeals filed by the assessee are arising out of the orders of the Commissioner of Income Tax (Appeals)-17, in short CIT(A), in appeals No. CIT(A)-17/IT-224 & 223/10733, 10458/16-17 even date 28.02.2018. The Assessments were framed by the Dy. Commissioner of Income Tax, Circle-8(2), Mumbai (in short ITO/AO) for the A.Ys. 2007-08 & 2011-12 vide orders dated 20.01.2014, 09.11.2009, under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act'). The penalties were levied by CIT(A)



Circle 17, Mumbai under section 271(1)(c) of the Act vide orders dated 29.02.2012 & 31.03.2016.

2. The only common issue in these two appeals of assessee is against the order of CIT(A) confirming the levy of penalty by AO under section 271(1)(c) of the Act. For this assessee has raised the issue at jurisdictional issue first. The facts and circumstances are exactly identical in both the years and the jurisdictional issue is also in both the years. Hence, we will take up the facts from AY 2007-08 in ITA No. 3309/Mum/2018 and will decide the issue. The grounds raised on jurisdictional issue by the assessee read as under: -

“1. The order passed by the learned Commissioner of Income-tax (appeals) -17, Mumbai, party confirming the assessment order passed under section 271(1)(c) of the Income-tax Act, 1961, is both bad-in-law and bad-in-facts.

2. The learned Commissioner of Income-tax (Appeals) erred in law as well as in facts in partially confirming the penalty order passed by the assessing officer on the basis of invalid notice issued under section 274 r.w section 271(1)(c) of the Income-tax Act, 1961.”

3. The learned Counsel for the assessee stated that the AO has levying the penalty on the following disallowance / additions: -



Sl No.	Disallowance / Addition	Amount (₹)
i)	Depreciation of land/ building	44,86,701/-
ii)	Disallowance of interest claimed u/s 24(b)	15,32,900/-
iii)	Disallowance U/s 14A	15,32,900/-
iv)	Deemed Dividend	3,00,000/-
v)	Disallowance of Interest on Loan [₹ 50,25,473 – (Rs. 15,32,900 + Rs. 6,59,900)]	28,32,673/-

4. The learned Counsel for the assessee took us through each of the disallowance and stated that the penalty is initiated by the AO in the assessment order against each disallowance identically by observing as under: -

“4.10 Since the assessee has made a wrong disclosure of facts to defraud the revenue and claimed depreciation which is not allowable Penalty proceedings under section 271(1)(c) is initiated for submitting inaccurate particulars of income.”

5. Similar initiation of penalty proceedings is for other disallowances. It means that according to the learned Counsel the penalty proceedings under section 271(1)(c) of the Act is initiated for furnishing of inaccurate particulars of income. Then the learned Counsel for the assessee took us through the penalty order by AO under section 271(1)(c) of the Act dated 28.10.2016 whereby the penalty has been levied on concealment of particulars of income and the relevant Para 8.5 read as under: -

“8.5 In view of the above observation and decision of Hon’ble Supreme Court and High



Courts, it is held that the assessee has concealed its income and submitted inaccurate particulars of income for AY 2007-08. Had the assessee's case not been selected for scrutiny, the assessee could have been benefitted by filing inaccurate particulars of income. The assessee took chance with the Department. Had the revenue not detected the inaccurate particulars of income of the assessee, the assessee could have enjoyed the fruits of filing inaccurate of particulars of income and would have caused loss to the revenue. It is also important to mention here that in that instant case, the concealment/ wrong claim would not have come to the notice of the department of the department if the case has not been picked up for scrutiny under section 143(3) of the IT Act, 1961. Therefore, the assessee have made an attempt to reduce their tax liability by claiming wrong deduction which is very much falling within the ambit of provisions of section 27(1)(c) of the IT Act. Therefore, there is no hesitation to say that this is a clear case of concealment of particulars of income. The penalty initiated in the case is justified and it is a fit case to levy penalty under section 271(1)(c) of the IT Act on the assessee."



6. Even the learned Counsel for the assessee drew our attention to the notice issued by the AO for initiation of penalty proceedings under section 274 read with section 271(1) of the Act dated 09.11.2019, wherein the AO has not strike off the relevant portion of the charge. When these facts were confronted to the learned Sr. Departmental Representative, only relied on the assessment order and the penalty order and the order of CIT(A).

7. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the AO in the assessment order has initiated the penalty proceedings for a specific charge i.e. for furnishing of inaccurate particulars of income, whereas he has levied the penalty for concealment of particulars of income while levying penalty under section 271(1)(c) of the Act vide order dated 28.10.2016. It means that the AO is not sure about the charge on which he his levying the penalty or initiating the penalty. We find that this issue is squarely covered by the decision of Hon'ble Bombay High Court in the case of CIT vs Samson Perinchery (2013) 392 ITR 4 (Bom). We noted that at the time of hearing the learned Sr. DR has not doubted the facts of the case but pointed out that there is due application of mind by the AO which can be demonstrated from the discussion in the assessment order and the order of CIT(A), wherein the reasons for the disallowance of depreciation, and recorded the satisfaction that the penalty proceedings are initiated under section 271(1)(c) of the Act for concealment of particulars of income as well as for furnishing of inaccurate particulars of income. We are of the view, that the Sr. DR has admitted to demonstrate the application of mind by the AO but it is no difference in as much as that the AO in assessment order has initiated the penalty proceedings for both



the charges i.e. for furnishing of inaccurate particulars of income as well as concealment of particulars of income. We find that this issue is squarely covered by the decision of Hon'ble Bombay High Court in the case of Samson Perinchery (supra) wherein it is held as under: -

“The impugned order of the Tribunal deleted the penalty imposed upon the Respondent Assessee. This by holding that the initiation of penalty under Section 271(1)(c) of the Act by Assessing Officer was for furnishing inaccurate particulars of income while the order imposing penalty is for concealment of income. The impugned order holds that the concealment of income and furnishing inaccurate particulars of income carry different connotations. Therefore, the Assessing Officer should be clear as to which of the two limbs under which penalty is imposable, has been contravened or indicate that both have been contravened while initiating penalty proceedings. It cannot be that the initiation would be only on one limb i.e. for furnishing inaccurate particulars of income while imposition of penalty on the other limb i.e. concealment of income. Further, the Tribunal also noted that notice issued under Section 274 of the Act is in a standard proforma, without having struck out irrelevant clauses therein. This



indicates non application of mind on the part of the Assessing Officer while issuing the penalty notice.”

8. Respectfully, following the Hon'ble High Court, we delete the penalty on this jurisdictional issue. Hence, we need not to go into the merits of the case.

9. Similar are the facts in ITA No. 3310/Mum/2018 for AY 2011-12, hence, taking a consistent view, we delete the penalty in this year also.

10. **In the result, the appeals of assessee are allowed.**

Order pronounced in the open court on 19.07.2019.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 19.07.2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

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)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai