

आयकर अपीलिय 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

| Sl. No. | ITA No. | Name of Appellant | Name of Respondent | Asst. Year |
|---------|---|---|---|---------------------------------|
| 1-3 | 1386/PUN/2006 1387/PUN/2006 1388/PUN/2006 | Coca Cola India Pvt. Ltd., Plot No.1109-10, Village Pirangut, Tal. Munshi, Pune. PAN : AAACB8573G | DCIT, Circle-1(1), Pune. | 1999-2000 2000-01 2001-02 |
| 4-5 | 150/PUN/2007 151/PUN/2007 | DCIT, Circle-1(1), Pune. | Coca Cola India Pvt. Ltd., Plot No.1109-10, Village Pirangut, Tal. Munshi, Pune. PAN : AAACB8573G | 1999-2000 2000-01 |
| 6-7 | 925/PUN/2011 926/PUN/2011 | Coca Cola India Pvt. Ltd., Plot No.1109-10, Village Pirangut, Tal. Munshi, Pune. PAN : AAACB8573G | Addl. CIT, Range-1, Pune. | 2002-03 2003-04 |

Assessee by : Shri R. Murlidhar
Shri Nikhil Garg
Revenue by : Shri S. B. Prasad

सुनवाई की तारीख / Date of Hearing : 27.08.2019
घोषणा की तारीख / Date of Pronouncement : 27.08.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are **7 appeals** under consideration involving the assessment years 1999-2000 to 2003-04. There are no cross-appeals by the Revenue for the assessment years 2001-02, 2002-03 and 2003-04. Two cross-appeals are filed by the Revenue for the assessment years 1999-2000 and 2000-01. Since the facts and levy of penalty is the common issue for

all the 7 appeals under consideration, therefore, these were heard together and are being disposed of by this composite order.

2. Since the legal issues relating to recording of satisfaction by the Assessing Officer at the time of initiation of the penalty proceedings and arguments of both the sides involved in all these 7 appeals are common, therefore, the appeal in ITA No.1386/PUN/2006 for the assessment year 1999-2000 taken as the lead case for adjudication.

ITA No.1386/PUN/2006 – A.Y. 1999-2000 – By Assessee

3. Before us, at the outset, ld. Counsel for the assessee submitted that this is a case of levy of penalty u/s 271(1)(c) of the Act. Referring to the **satisfaction recorded** by the Assessing Officer in the assessment orders (similar in all the assessment orders under consideration), the ld. Counsel for the assessee submitted that the Assessing Officer suffers from ambiguity in his mind while recording the satisfaction/initiating the penalty u/s 271(1)(c) of the Act. Referring to the assessment year 1999-2000, the ld. Counsel for the assessee brought our attention to the assessment order at page 42 and submitted that the Assessing Officer recorded/invoked both the limbs of clause (c) of section 271(1) of the Act. Further, referring to notice issued u/s 274 of the Act, ld. Counsel submitted that the Assessing Officer failed to tick off the relevant limb of clause (c) of section 271(1) of the Act. Finally, referring to the penalty order at page 20, the ld. Counsel for the assessee submitted that the penalty is levied for furnishing of inaccurate particulars income. Referring to all the above facts on the technical issue, the ld. Counsel

demonstrated that the penalty levied by the Assessing Officer is unsustainable in law as the satisfaction recorded by the Assessing Officer suffers from the ambiguity. The Id. Counsel relied on the 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, copies of which are placed on record. Further, Id. Counsel for the assessee also filed a copy of the decision of the Co-ordinate Bench of the Tribunal in the case of Mr. Uttam Bhagwanrao Patil vs. DCIT for the assessment years 2001-02 & 2003-04 and others, order dated 19.07.2019 and relied on the same.

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

5. On hearing both the sides on this legal issue, we find relevant to extract from the assessment order the satisfaction recorded by the Assessing Officer and also from the penalty order, which are extracted as under :-

“Assessment Order –

*“6.7 The penalty proceedings u/s 271(1)(c) r.w. explanation (1) of the I.T. Act is separately initiated for furnishing the inaccurate particulars of income **and/or** concealing the income.”*

“Penalty Order –

“Thus assessee has furnished inaccurate particulars of income and hence is liable to levy of penalty u/s 271(1)(c).....”

6. Considering the above, we are of the opinion that the legal requirement of making a clear cut reference to an applicable limb of clause (c) of section 271(1) of the Act, is not met by the Assessing Officer while initiating the penalty u/s 271(1)(c) of the Act. Thus, the satisfaction of the Assessing Officer suffers from ambiguity in his mind.

7. 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 legal ground raised by the assessee is **allowed**.

8. Considering the relief to the assessee on legal issue, the adjudication of the other grounds on merits of penalty becomes an academic exercise only. Accordingly, the said grounds are dismissed as academic.

9. In the result, the appeal of the assessee in ITA No.1386/PUN/2016 is partly allowed.

10. We shall take up the rest of the **4 appeals** of the assessee. Issues are identical in these 4 appeals.

ITA Nos.1387 & 1388/PUN/2006 - A.Y. 2000-01 & 2001-02
ITA Nos.925 & 926/PUN/2011 - A.Y. 2002-03 & 2003-04

11. Considering the commonality of the issues relating to satisfaction while initiated the penalty proceedings as well as the arguments of the ld. Counsel for the assessee, we are of the opinion, legal issues raised in the rest of 4 appeals of the assessee for the assessment years 2000-01 to 2003-04 should also be allowed in favour of the assessee. Accordingly, the relevant legal grounds of these 4 appeals for the assessment years 2001-02 to 2003-04 stands allowed on technical grounds.

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

13. We shall now take up the cross appeals of the Revenue (**2 cross appeals**). Issues are identical in these 2 cross appeals.

ITA Nos.150 & 151/PUN/2007 - A.Y. 1999-2000 & 2000-01

14. 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 these 2 cross appeals for the assessment years 1999-2000 & 2000-01 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 years 1999-2000 & 2000-01 stands dismissed.

15. Since the legal ground raised by the Revenue is dismissed, the adjudication of other grounds on merits becomes an academic exercise only. Accordingly, the other grounds are dismissed as academic.

16. In the result, the **cross appeals of the Revenue dismissed.**

17. To sum up, all the five appeals of the assessee are partly allowed and the two cross appeals of the Revenue are dismissed, as above.

Order pronounced in the open Court on 27th 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 : 27th 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)-1, Pune.
4. The CCIT, 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.