

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

आयकर अपील सं. / ITA No.338/PUN/2017
निर्धारण वर्ष / Assessment Year : 2003-04

Sandvik Asia Private Limited,
Mumbai – Pune Road,
Dapodi, Pune-411012.

PAN : AACCS6638K

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle-10,
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri N. Ashok Babu

सुनवाई की तारीख / Date of Hearing : 02.07.2019
घोषणा की तारीख / Date of Pronouncement : 26.08.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of CIT(A)-13, Pune dated 22.11.2016 for the Assessment Year 2003-04.

2. This is appeal where the Assessing Officer made assessment determining the total income at Rs.Nil after making series of additions which are in listed in para 3 of the penalty order (8 additions).

3. Before us, ld. Counsel for the assessee, at the outset, submitted that, out of the 8 additions originally made by the Assessing Officer, only three additions i.e. (i) interest on I.T. Refund for A.Y. 2001-02; (ii) depreciation on Plant & Machinery; and, (iii) repairs to factory and building, are confirmed by the CIT(A). There is requirement for recording satisfaction of Assessing Officer why the penalty is initiated for each of the addition and there is requirement for specific mentioning of the limb of clause (c) of section 271(1) of the Act. Considering the said additions and the satisfaction recorded by the Assessing Officer in the assessment order dated 30.03.2006, ld. Counsel for the assessee submitted that the Assessing Officer **failed to record any satisfaction whatsoever** while making the said three additions. The ld. Counsel, however, submitted that only satisfaction recorded by the Assessing Officer is at the end of the last page of the assessment order and the same is a general or common satisfaction recorded below the computation of total income. The ld. Counsel further submitted that the Assessing Officer merely mentioned *“Initiate penalty proceedings u/s 271(1)(c) of the I.T. Act for furnishing inaccurate particulars of income”* and there is no addition – specific satisfaction at all. The ld. Counsel submitted that the requirement of recording the individual satisfaction for each addition is expressly missing in the assessment order. The ld. Counsel further submitted that in the penalty order dated 27.03.2014, the penalty is levied by stating that *“..... as the assessee company has furnished inaccurate particulars of income.....”*.

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

5. On hearing both the sides on this issue and considering the above stated generic – satisfaction recorded in the assessment order, we are of the opinion that the penalty order of the Assessing Officer is unsustainable in law. It is a fit case for invoking the ratio laid down by the 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.

6. 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.

7. Considering the relief on legal issue, the adjudication of other grounds on merits becomes an academic exercise only. Accordingly, the other grounds raised by the assessee are dismissed as academic.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 26th 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 : 26th 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)-13, 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.