

आयकर अपीलीय अधिकरण न्यायपीठ, नागपुर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL BENCH, NAGPUR

(At e-Court, PUNE)

BEFORE SHRI D. KARUNAKARA RAO, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 535/NAG/2014

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Anil Dalpatmal Bafna,
Flat No.606, Rachana Yuthika
Apartment, After Postal Colony,
Amrawati Road, Nagpur-440033.
PAN : AESPB0883J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(1), Nagpur.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Anil Bafna
Revenue by : Dr. Milind Bhusari

सुनवाई की तारीख / Date of Hearing : 16.10.2019

घोषणा की तारीख / Date of Pronouncement : 16.10.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeal)-I, Nagpur dated 28.08.2014 for the assessment year 2010-11
as per the grounds of appeal on record.

2. The crux of the grievance of the assessee in this appeal is with regard to the imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. At the very outset, the Ld. AR of the assessee submitted that as per the assessment order, the penalty has been imposed by the Assessing Officer for 'concealment of income' by observing as follows:

"As the assessee has concealed particulars of his income, penalty proceedings initiated u/s.271(1)(c) of the I.T. Act."

That however, while levying penalty, in the penalty order, the Assessing Officer has held as follows:

"The assessee has concealed the particulars of his income to the extent of Rs.1,56,20,809/- and furnished inaccurate particulars of such income. I am convinced that the assessee has committed a default within the meaning of Section 271(1)(c) of the I.T. Act, 1961 and penalty is exigible to the facts of the case."

3.1. The Ld. AR of the assessee vehemently submitted after stating that the penalty may be levied u/s.271(1)(c) of the Act for 'concealment of income' in the assessment order, in the penalty order, the Assessing Officer has stated that the assessee has 'concealed particulars of income' and 'furnished inaccurate particulars of income'. Therefore, the Assessing Officer has not derived proper satisfaction as to which limb; the penalty has to be levied on the assessee. For this proposition, the Ld. AR of the assessee relied on the judgment of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Samson Perinchery reported as 392 ITR 4 (Bom.) wherein the Hon'ble Bombay High Court has followed the view of Karnataka High Court in the

case of CIT Vs. Manjunath Cotton & Ginning Factory reported in 359 ITR 565(Kar.) wherein it was observed that the Hon'ble Supreme Court of India had held in T. Ashok Pai Vs. CIT reported as 292 ITR 11 (SC) that act of 'concealment of income' and act of 'furnishing inaccurate particulars' are two different things.

4. On the other hand, Ld. DR for the Revenue has relied on the orders of the Sub-ordinate Authorities.

5. We have perused the case records and heard the rival contentions. We find that though in the assessment order, penalty has been initiated for 'concealment of income', however, in the penalty order itself, the Assessing Officer has not arrived at proper satisfaction so as to impose the specific limb on which he proposed to levy the penalty on the assessee u/s.271(1)(c) of the Act whether it is for 'concealment of income' or for 'furnishing of inaccurate particulars of income'. The judicial pronouncements as relied on by the Ld.AR of the assessee and various other decisions are clear on the issue that penalty provisions are separate from assessment proceedings and levy of penalty is not good news for the assessee.

That taking guidance from the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Samson Perinchery (supra.) wherein the Hon'ble Bombay High Court has considered the decision of Hon'ble Karnataka High Court in the case of CIT Vs. Manjunath Cotton and Ginning Factory (supra.), the legal proposition that comes out and which is binding in nature is that 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.

6. The sanctity in terms of natural justice with regard to this proposition is that the assessee under the scheme of welfare legislation which is embedded in the Income Tax Act, 1961 should get an opportunity to prepare himself for the defense as regards to the exact charge on which penalty is imposed upon him u/s. 271(1)(c) of the Act. In the instant case, the charge is vague and therefore, levy of penalty is not warranted.

Taking totality of facts and legal scenario into consideration and on examination of documents on record on the very fact that penalty issue is ambiguous and the charge is not specific, we set aside the order of the Ld. CIT(Appeals) and direct the Assessing Officer to delete the penalty from the hands of the assessee.

7. Since the assessee gets relief on the legal ground, all other grounds on merits becomes academic in nature.

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

Order pronounced on 16th day of October, 2019.

Sd/-
D. KARUNAKARA RAO
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 16th October, 2019.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal)-I, Nagpur.
4. The CIT-1, Nagpur.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण,
नागपुर / DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	16.10.2019	Sr.PS/PS
2	Draft placed before author	16.10.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		