

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.2566/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Surjitsingh Sevaksingh Bagga,
24/25 Somwar Peth,
Pune - 411 011.

..... अपीलार्थी /
Appellant

PAN : ACMPB9487E.

बनाम v/s

The Income Tax Officer,
Ward-6(1), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Bharat Shah.

Revenue by : Shri Prashant Gadekar.

सुनवाई की तारीख / Date of Hearing : 17.07.2019	घोषणा की तारीख / Date of Pronouncement: 16.10.2019
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आदेश / **ORDER**

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A)-4, Pune, dated 30.06.2016 for the assessment year 2013-14.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual and is having income from house property, business, capital gains and other sources. Assessee filed his return of income for A.Y. 2013-14 on 30.11.2013 declaring total income of Rs.14,26,073/-. The case was selected for scrutiny and

thereafter, assessment was framed u/s 143(3) of the Act vide order dt.28.03.2016 determining the total income at Rs.85,05,116/- inter-alia by making addition of Rs.70,79,043/- on account of long term capital gains and Rs.91,153/- on account of capital gains. On the aforesaid additions, AO vide order dt.30.09.2016 levied penalty of Rs.14,58,282/- u/s 271(1)(c) of the Act. Aggrieved by the penalty order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.30.06.2016 (in appeal No.PN/CIT(A)-4/DCIT, Circle-6, Pune/595/2016-17) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

"1. On the facts and in the circumstances of the case and in law, the Learned Assessing Officer has erred in levying a penalty u/s 271 (1)(C) of the Income Act, 1961 without recording any satisfaction regarding furnishing of accurate particulars of income or concealment of income in the show use notice, rather penalty is levied for both the alleged defaults.

2. Without prejudice to Ground No.1 the authorities below erred in facts and circumstances of the case and in concluding that the assessee has furnished inaccurate particulars of income and hence it is a fit case for levy of penalty u/s 271(1)(c) thereby levying and confirming penalty of Rs. 145&.282/-. Again the addition made in the assessment order in itself is for wrong assessment year. Hence penalty so levied be cancelled and just and proper relief be granted to the assessee in this respect.

3. Both the grounds being inter-connected are considered together.

4. During the course of assessment proceedings, AO noticed that assessee had shown long term capital gains with respect to two properties. One situated at Mangalvar Peth at Flat No.407 and the other at Kumar Corner Co-operative Housing Society. With respect to sale of property at Mangalvar Peth, it was noticed that the property

was bequeathed by the assessee on the demise of his father and it was sold for Rs.90 lakhs on 05.02.2013. Assessee had claimed expenses of Rs.1,80,000/- and the net sale consideration was shown at Rs.88,20,000/-. Assessee had indexed the cost and cost of improvement and worked out the capital gains at Rs.70,79,043/-. Assessee had claimed amount of Rs.49,68,975/- as exempt income on account of re-investment for purchase of residential property for Rs.61,91,000/-. Assessee had also claimed deduction of Rs.21,10,068/- on account of deposits of Rs.26,50,000/- in a specified bank account. The assessee was asked to prove the claim of construction of residential house. Assessee furnished necessary details and on its perusal, AO noticed that the claim of construction of residential house was not supported by any documentary evidences of PMC for local authority. AO concluded that assessee had purchased an open plot but had not constructed any residential house and claimed to have renovate the old structure. According to AO, the claim of assessee was not justifiable as only a compound wall was constructed and one small watchmen's cabin was situated on the said plot. AO therefore concluded that assessee had not invested the capital gains and therefore rejected the claim. On account of the aforesaid rejection of claim, AO levied penalty u/s 271(1)(c) of Rs.14,58,282/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who dismissed the appeal of assessee.

Aggrieved by the order of Ld.CIT(A), assessee is now before us.

5. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that assessee has not furnished any inaccurate particulars which is incorrect or inaccurate in the return of income and the additions have been made only on account of difference of opinion and it is not a case of concealment of income or furnishing of inaccurate particulars of income. Ld.A.R. further submitted that assessee has made a bonafide claim u/s 54 of the Act as assessee had purchased plot for construction of the residential house property. Assessee has invested Rs.26,50,000/- by assessment year of Kamadhenu Deposits with Canara Bank and it was utilized by the assessee for construction activity as and when required. He further submitted that even if the assessee could not substantiate the deposits made by him for the construction activity, the long term capital gains could have been taxed in A.Y. 2016-17 and not in A.Y. 2013-14. He therefore submitted that AO had made addition in the wrong assessment year and had levied the penalty. However, on merits, he submitted that all the required details were furnished by the assessee and merely because the additions have been upheld, it is not necessary penalty on such amounts be levied and in view of the fact that penalty and assessment proceedings are distinct and separate. He therefore submitted that the penalty levied be deleted. Ld. D.R. on the other hand, supported the order of AO.

6. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to levy of penalty u/s 271(1)(c) of the Act on the denial of claim of deduction u/s 54 of the Act. Before us, assessee has submitted that he had

purchased land for construction of the house and also utilized the capital gains which was deposited in the bank account for the purpose of construction. It is assessee's submission that he had furnished all the required details in the return of income and no information given in the return of income is incorrect or inaccurate. The aforesaid contentions of the assessee have not been found to be false. He therefore submitted that the penalty be deleted. Ld. D.R. on the other hand, supported the order of AO and Ld.CIT(A).

7. The necessary ingredients for attracting Explanation-1 to Section 271(1)(c) are that: (i) the person fails to offer the explanation, or (ii) he offers the explanation which is found by the AO or the ld.CIT(A) or the ld.CIT to be false, or (iii) the person offers explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same have been disclosed by him. If the case of any assessee falls in any of these three categories, then according to the deeming provision provided in Explanation-1 to Section 271(1)(c) the amount added or disallowed in computing the total income shall be considered as the income in respect of which particulars have been concealed, for the purposes of clause (c) of Section 271(1), and the penalty follows. On the other hand, if the assessee is able to offer an explanation, which is not found by the authorities to be false, and assessee has been able to prove that such explanation is bona fide and that all the facts relating to the same have been disclosed by him, then in that case penalty shall not be imposed.

8. A case for levy of penalty for concealment of income has to be evaluated in terms of provisions of Explanation 1 to Section 271(1)(c), as per which if in relation to any addition in the assessment, the assessee offers no explanation or offers explanation which is found to be false or is not able to substitute the explanation and is also not able to prove that the explanation is bonafide, the additions made would amount to concealment of particulars, of income. It is well settled that the parameters of judging the justification for addition made in the assessment case of the assessee is different from the penalty imposed on account of concealment of income or filing inaccurate particulars of income and that certain disallowance/addition could legally be made in the assessment proceedings on the preponderance of probabilities but no penalty could be imposed u/s. 271(1)(c) of the Act on the preponderance of probabilities and Revenue has to prove that the claim of expenses by the assessee was not genuine or was inflated to reduce its tax liability. Further merely because additions have confirmed in appeal or no appeal has been filed by assessee against additions made, it cannot be the sole ground for coming to the conclusion that assessee has concealed any income. Before us, Ld.A.R. has given the reasons and the facts which had resulted into additions. He has also submitted that the addition if at all was to be made, it would have been made in A.Y. 2016-17 and not in A.Y. 2013-14. These submissions have not been controverted by the Revenue. Further, there is nothing on record to demonstrate that assessee had filed inaccurate particulars of income or had concealed the particulars of income. We further find that Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd. reported at (2010) 322 ITR

158 (SC) held that a mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars.

9. Considering the aforesaid facts and relying on the foresaid judgment of the Hon'ble Apex Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd. (supra), we are of the view that in the present case no case for levy of penalty u/s. 271(1)(c) of the Act has been made out. We thus direct the deletion of penalty u/s. 271(1)(c) of the Act.

Thus, the grounds of assessee are allowed.

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

Order pronounced on 16th day of October, 2019.

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

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

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-4, Pune.
4. Pr.CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी"/ DR,
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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