

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER  
ITA NO.3786/MUM/2018(A.Y. 2013-14)

Nitin Desai & Sandeep Shirke Associates,  
201-A, Central Avenue,  
Ventura Shopping Center, Powai,  
Mumbai 400 076  
PAN:AAJFN1544R

..... Appellant

Vs.

ACIT-26(2)  
Mumbai

..... Respondent

Appellant by : Shri Shri Devendra Jain

Respondent by : Ms. Kavita P. Kaushik

Date of hearing : 18/09/2019

Date of pronouncement : 17/10/2019

ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of CIT(A) - 38, Mumbai dated 20/02/2018 for the assessment year 2013-14 confirming levy of penalty under section 271(1)(c) of the Income Tax Act 1961 (herein after referred to as 'the Act').

2. Shri Devendra Jain appearing on behalf of the assessee submitted that penalty proceedings initiated by the Assessing Officer under section 271(1)(c) of the Act suffers from legal defect of wrongful recording of satisfaction. The Id. Authorized Representative of the assessee pointed that while recording satisfaction, the Assessing Officer

mentioned that the penalty proceedings under section 274 r.w.s. 271(1)(c) of the Act is initiated for concealing particulars of income by furnishing inaccurate particulars of income. Thus, from the perusal of the assessment order, it is evident that there was ambiguity in the mind of Assessing Officer regarding charge to be invoked for initiating penalty proceedings. The Id. Authorized Representative of the assessee further pointed that even while passing order levying penalty dated 30/06/2016, the Assessing Officer at some places has used the expression 'concealed' along with 'furnishing inaccurate particulars of income' and while concluding the order he has held that penalty is being levied for concealment. The Id. Authorized Representative of the assessee asserted that where there is ambiguity in recording of satisfaction and levy of penalty, the penalty order is liable to be set-aside. In support of his submissions the Id. Authorized Representative of the assessee placed reliance on the following decisions:-

1. CIT vs. Manjunatha Cotton & Ginning Factory, 359 ITR 565(Kar)
2. Cit vs. Samson Perinchery, 88 taxmann.com 413(Bom)
3. Per contra, Ms Kavita P. Kaushik representing the Department vehemently defended the impugned order. The Id. Departmental Representative submitted that the penalty has been initiated and levied by the Assessing Officer as per provisions of the Act.
4. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee has assailed penalty proceedings initiated by the Assessing Officer under section 271(1)(c) of the Act, on the ground of ambiguity in recording of

satisfaction. A perusal of the assessment order shows that penalty in respect of addition of Rs.6,26,253/- has been initiated against the assessee by Assessing Officer by observing as under:-

*“Penalty proceedings under section 274 r.w.s. 271(1)(c) are separately initiated for concealing particulars of income by furnishing inaccurate particulars of income.”*

4.1 The Hon'ble Supreme Court of India in the case of T. Ashok Pai vs. CIT, 292 ITR 11(SC) has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. Thus, these expressions cannot be used inter changeably. The Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory (supra), after considering the aforesaid decision by the Hon'ble Apex Court held, that the assessee should know the ground which he has to meet specifically, otherwise, principles of natural justice is offended. Thus, from the reading of above judgments it can be safely construed that on the basis of such ambiguous recording of satisfaction no penalty could be imposed on the assessee. The charge for levy of penalty has to be clear, i.e. concealment of income or furnishing inaccurate particulars of income. Where the charge is unclear, penalty is not sustainable.

4.2 In the present case, a perusal of the penalty order under section 271(1)(c) of the Act dated 30/06/2016 further shows that there was ambiguity in the mind of Assessing Officer even at the time of levy of penalty. The Assessing Officer in the concluding part of the penalty order observed as under:-

*“The contentions of assessee are not accepted and it is held that assessee has concealed the taxable income as well as furnished inaccurate particulars within the meaning of sec. 271 (1) (c) of the Act and explanation offered by him is not bonafide and is incorrect and false on facts, Therefore, the assessee is held liable for levy of penalty u/s 271(1) (c) of the Act. Accordingly, the assessee has*

concealed the income of Rs.6,26,253/- in respect of which the penalty is levied at 100% of the tax sought to be evaded on the concealed income."

A bare perusal of the above finding of the Assessing Officer would show that the Assessing Officer was not clear as to which charge of section 271(1)(c) of the Act is to be invoked for levy of penalty. The vagueness in the mind of Assessing Officer is apparent writ large even at the time of passing penalty order. Thus, in view of the facts and the case laws discussed above, we find merit in the submissions made by the Id. Authorized Representative of the assessee. The penalty order is liable to be quashed on account of ambiguity. We hold and direct accordingly. The subsequent proceedings arising therefrom are vitiated and hence, set-aside.

5. In the result, appeal by the assessee is allowed.

Order pronounced in the open court on Thursday the 17<sup>th</sup> day of October 2019.

Sd/-  
(RAJESH KUMAR )  
ACCOUNTANT MEMBER

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Mumbai, Dated 17/10/2019  
Vm, Sr. PS(O/S)

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**