

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “ए” पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “A”, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI S.S. VISWANETHRA RAVI, JM

आयकर अपील सं / ITA Nos.985 & 986/PUN/2017

निर्धारण वर्ष / Assessment years : 2009-10 & 2010-11

Rahul Cables Private Limited,  
Office No.114/115, Aurora Towers,  
M.G. Road, Camp,  
Pune – 411 001.  
Maharashtra.

..... अपीलार्थी /  
Appellant

PAN : AABCR4218B.

बनाम v/s

The Dy. Commissioner of Income Tax,  
Circle – 5, Pune.

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri Shanthu Paranjape

Revenue by : Shri D.Ghosh and Shri Abhijit Haldar

सुनवाई की तारीख / Date of Hearing : 16.10.2019	घोषणा की तारीख / Date of Pronouncement: 30.10.2019
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आदेश / ORDER

**PER ANIL CHATURVEDI, AM :**

1. These appeals filed by the assessee are emanating out of the separate orders of Commissioner of Income Tax (A) – 8, Pune dt.12.01.2017 for the assessment years 2009-10 and 2010-11.

2. Before us, at the outset, both the parties submitted that though the appeals are for two different assessment years but the facts and issues involved in both the appeals are identical except for the assessment year and the amounts involved and therefore the submissions made by them while arguing one appeal would be equally applicable to the other appeal also and thus, both the appeals can be heard together. In view of the aforesaid submissions of both the parties, we, for the sake of convenience,

proceed to dispose of both the appeals by a consolidated order but however, proceed with narrating the facts for assessment year 2009-10.

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

Assessee is a private limited company stated to be engaged in the business of trading of wires and cables. Assessee filed its return of income for A.Y. 2009-10 on 31.10.2009 declaring total income at Rs.2,51,15,300/-. In this case assessment was re-opened u/s 147 of the Act. Subsequently, the case was taken up for scrutiny and thereafter assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dated 06.06.2014 and the total income was determined at Rs.3,20,71,009/- inter-alia by making addition of Rs.69,55,709/- on account of hawala purchases. On the aforesaid addition of hawala purchases, AO vide order dt.25.03.2015 levied penalty of Rs.23,64,244/- u/s 271(1)(c) of the Act.

For A.Y. 2010-11 the details of income offered by the assessee, addition made and penalty levied are as under :

A.Y.	Returned income	Addition	Total income assessed u/s 143(3)	Penalty levied
2010-11	Rs.2,14,14,700/-	Rs.42,09,223/- on account of hawala purchases	Rs.2,56,23,933/-	Rs.14,30,714/-

Aggrieved by the orders of AO levying penalty u/s 271(1)(c) of the Act, assessee carried the matter before Ld.CIT(A), who vide separate orders dt.12.01.2017 (in appeal No.PN/CIT(A)-8/DCIT, Circle-5, Pune/146 & 147/2016-17) dismissed the appeals of the assessee. Aggrieved by the orders of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

*“1 The learned Dy. Commissioner of Income Circle-S, Pune has erred in levying penalty of Rs. 23,64,240/- u/s 271(1)(c) of the Income Tax Act, 1961 even though we have disclosed all the related facts, submitted all the related documents and details with explanations and the Commissioner of Income Tax (Appeals)- 8, Pune has erred in confirming the same.*

*2. The learned Dy. Commissioner of Income Circle-S, Pune and the Commissioner of Income Tax (Appeals)- 8, Pune have not followed the principal of natural justice, hence their respective orders are bad in law.*

4. Similar grounds have been raised in ITA No.986/PUN/2017 for A.Y. 2010-11.

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

5. Before us, Ld.A.R submitted that while passing the assessment order, AO with respect to addition on account of hawala purchases has recorded that assessee had “concealed the particulars of income” to the extent of Rs.69,55,709/- but while passing the penalty order u/s 271(1)(c) of the Act on 25.03.2015 AO had levied penalty for both the limbs i.e., “for furnishing inaccurate particulars of income” as well as for “concealment of income”. He therefore relying on the decision of Hon’ble Bombay High Court in the case of CIT Vs. Samson Perinchery reported in (2017) 392 ITR 4 (Bom) submitted that in the absence of proper show cause notice to assessee, penalty u/s 271(1)(c) cannot be levied and therefore urged that penalty levied by AO be deleted. Ld.D.R. on the other hand, supported the order of lower authorities.

6. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to levy of penalty u/s 271(1)(c) of the Act. In the present case in A.Y. 2009-10, penalty of Rs.23,64,244/- u/s 271(1)(c) of the Act has been levied on amount of

Rs.69,55,709/- being the addition on account of hawala purchases. In A.Y. 2010-11, penalty of Rs.14,30,714/- u/s 271(1)(c) of the Act has been levied on amount of Rs.42,09,223/- being the addition on account of hawala purchases. The perusal of assessment orders passed u/s 143(3) r.w.s. 147 of the Act reveals that in the assessment orders AO had recorded satisfaction for “concealment of income” and thereafter, in the penalty orders passed u/s 271(1)(c) of the Act, AO had levied penalty for “furnishing of inaccurate particulars of income” as well as for “concealment of income” i.e., for both the limbs. It is a settled law that while levying penalty, the AO has to record satisfaction and thereafter come to a finding in respect of one of the limbs, which is specified under section 271(1)(c) of the Act. The first step is to record satisfaction while completing the assessment as to whether the assessee had furnished inaccurate particulars of income or concealed his income. Thereafter, notice u/s 274 read with Section 271(1)(c) of the Act is to be issued to the assessee. The Assessing Officer thereafter has to levy penalty under Section 271(1)(c) of the Act for non-satisfaction of either of the limbs. While completing the assessment, the Assessing Officer has to come to a finding as to whether the assessee has concealed its income or furnished inaccurate particulars of income. The Hon’ble Bombay High Court in CIT Vs. Shri Samson Perinchery (supra) held that where initiation of penalty is one limb and the levy of penalty is on other limb, then in the absence of proper show cause notice to the assessee, there is no merit in levy of penalty.

7. Considering the facts of the present case in the light of the decision of Hon’ble Bombay High Court in the case of Samson Perinchery (supra), we are of the view that in the present cases, the basic condition for levy of penalty has not been fulfilled and that the penalty orders suffers from

non-exercising of jurisdiction power and therefore penalty orders cannot be upheld. We accordingly set aside the penalty orders passed by AO.

**Thus, the grounds of assessee are allowed.**

**8. In the result, both the appeals of the assessee are allowed.**

Order pronounced on 30<sup>th</sup> day of October, 2019.

**Sd/-**

**(S.S. VISWANETHRA RAVI)**  
न्यायिक सदस्य / JUDICIAL MEMBER

**Sd**

**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 30<sup>th</sup> October, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-11, Pune.
4. Pr. CIT(Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR,  
ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

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