

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

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

आयकर अपील सं. / ITA No.1896/PUN/2017
निर्धारण वर्ष / Assessment Year : 2011-12

Avinash Anant Kulkarni,
C-11, Kapil Malhar,
Baner Road, Pune-411045.

PAN : ABCPK7943F

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-7(2),
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor Phadke
Revenue by : Shri Hoshang Boman Irani

सुनवाई की तारीख / Date of Hearing : 15.11.2019
घोषणा की तारीख / Date of Pronouncement : 19.11.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee is against the order of the CIT(A)-3, Pune dated 31.05.2017 for the assessment year 2011-12.

2. The grounds raised by the assessee are as under :-

"1. The learned CIT(A)-3, Pune erred in law and on facts in confirming the penalty u/s 271(1)(c) of the ITA, 1961; levied by the learned AO, amounting to Rs. 2,39,867/- (being 100% on the addition amount of Rs 9,05,997) for furnishing of inaccurate particulars and concealment of income on account of non disclosure of officers Superannuation Funds received from COSMO Films Ltd.

2. The learned l-T authorities erred in not appreciating that the purpose of levying penalty u/s 271(1)(c) of the ITA, 1961 is willful concealment of income, leading to evasion / avoidance of tax. The learned l-T authorities ought to have appreciated that appellant was under bonafide belief that tax compliance w.r.t. Superannuation funds received have already been complied with.

3. *The appellant craves leave to add / modify / alter / delete all / any of the grounds of appeal.*

3. Briefly stated the relevant facts include that the assessee is a salaried persons who derived income from salary from M/s Desai Electronics Pvt. Ltd. and M/s Cermet Resistronics Pvt. Ltd.. The assessee filed the return of income declaring total income of Rs.3,49,540/-. At the end of the assessment u/s 143(3) of the Act, the Assessing Officer assessed the total income of the assessee after making certain additions on account of (i) salary – Rs.9,05,997/- and (ii) other sources (interest) – Rs.63,916/- and determined the total income of the assessee at Rs.13,29,450/- against returned income. Further, the Assessing Officer initiated the penalty proceeding stating that *“Penalty u/s 271(1)(c) of IT Act, 1961 is initiated separately for furnishing inaccurate of particulars/concealed income”*. (para 5.1 & 5.2 of the assessment order).

4. In the penalty order, the Assessing Officer clearly stated that the levy of penalty is for the default of *“.....furnishing of inaccurate particulars and concealment of income.”* (para 4 of the penalty order).

5. The CIT(A), relying on the various judgements of the High Court, confirmed the penalty as levied by the Assessing Officer. The contents of para 5.3 onwards of the appellate order are relevant in this regard.

6. Aggrieved with the said decision of the CIT(A), the assessee is in appeal before the Tribunal with the above extracted grounds.

7. According to the ld. AR, the order of the CIT(A) shall have to be set-aside on the legal issue relating to the ambiguity in the mind of the Assessing Officer while dealing with the initiation and levy of penalty. Highlighting the legal requirement of making a specific reference to the specific limb of clause (c) of section 271(1) of the Act and relying on various 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, Ld. Counsel demonstrated that the penalty levied by the Assessing Officer is unsustainable in law and the same is wrongly upheld by the CIT(A).

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

9. We heard both the parties on this legal issue and also perused the material available on record. We find that this is a case where the Assessing Officer failed to record proper satisfaction while initiating and levying the penalty u/s 271(1)(c) of the Act. In this regard, we pursued the orders of the Revenue authorities. On perusal of para 5.1 & 5.2 of the assessment order, we find the following is the reasons for initiation of penalty proceedings :-

*“Penalty u/s 271(1)(c) of IT Act, 1961 is initiated separately for **furnishing inaccurate of particulars/concealed income**”.*

10. Further, we also perused the penalty order passed by the Assessing Officer on 24.07.2014. On perusal of penalty order, we find the following is the reasons for levy of penalty u/s 271(1)(c) of the Act :-

“4. *furnishing of inaccurate particulars and concealment of income.*”

11. The above extracts reveal that the Assessing Officer suffers from ambiguity in his mind while recording the satisfaction at the time of initiation of penalty proceedings u/s 271(1)(c) of the Act.

12. Considering the above, we are of the opinion that the legal requirement of making a clear cut reference to the applicable limb of clause (c) of section 271(1) of the Act, is not met by the Assessing Officer while initiating and levying the penalty u/s 271(1)(c) of the Act. Thus, the satisfaction of the Assessing Officer suffers from ambiguity in his mind.

13. 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.

14. In the result, the appeal of the assessee is allowed.

Order pronounced on 19th day of November, 2019.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 19th November, 2019

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-3, Pune.
4. The Pr. CCIT, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.