

आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 4735/Mum/2018

(निर्धारण वर्ष / Assessment Year 2012-13)

आयकर अपील सं./ ITA No. 4736/Mum/2018

(निर्धारण वर्ष / Assessment Year 2013-14)

आयकर अपील सं./ ITA No. 4737/Mum/2018

(निर्धारण वर्ष / Assessment Year 2014-15)

Nipra Packaging Private Limited D/701, Shri Marigold Gundecheval, Flower, Thakur Village, Kandivali East, Mumbai-400 101	बनाम/ Vs.	The Dy. Commissioner of Income Tax, Central Circle- 5(2), Room No. 1908, 19 th Floor, Air India Building, Mumbai-400 021
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAACN1427F		

अपीलार्थी की ओर से / Appellant by	:	Shri Pratik Jain, AR
प्रत्यर्थी की ओर से / Respondent by	:	Ms. Kavita P Kaushik, DR

सुनवाई की तारीख / Date of hearing:	28.11.19
घोषणा की तारीख / Date of pronouncement:	28.11.19



आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

These appeals of assessee are arising out of the different orders of Commissioner of Income Tax (Appeals)-53, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-53/IT-18,20 & 21/DCCC-5(2)/2017-18 of even date 25.05.2018. The Assessments were framed by the Dy. Commissioner of Income Tax, Circle-5(2), Mumbai (in short DCIT/ AO) for the A.Ys. 2012-13 to 2014-15 even dated 28.10.2016 under section 153C read with section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act'). The penalties were levied by DCIT, Circle 5(2), Mumbai of even date 26.04.2017 under section 271(1)(c) of the Act.

2. The only common issue in these three appeals of assessee is against the order of CIT(A) confirming the levy of penalty under section 271(1)(c) read with section 274 of the Act, penalty levied by AO in a mechanical manner without pointing out under which limb the penalty is being initiated. The facts and circumstances in all the three years are exactly identical and the grounds raised are also identical except the quantum of penalty. The grounds in AY 2012-13 in ITA No. 4735/Mum/2018 read as under: -

"1. On the facts and circumstances of the Appellant', case and in Law, the notice issued under section 274 read with section 271(1)(c)



by the I.d. Assessing Officer in a mechanical manner without recording any satisfaction is bad in law and the consequential penalty order passed under section 271(l)(c) of the Act is bad in law and not sustainable in the eyes of law.

2. On the facts and circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) erred in confirming the action of Ld. Assessing Officer's in imposing penalty of Rs. 80,240/- by invoking provisions of section 271(1)(c) of the Income Tax Act, 1961."

3. Briefly stated facts are that the search and seizure action under section 132 of the Act was conducted on IPCA Laboratories Ltd. and other group concerns on 23.13.2014. Consequent, to this search a notice under section 153C of the Act was issued in the case of assessee and in response to the notice dated 05.08.2016, the assessee filed its return of income on 16.08.2016. During the course of search, in the case of Kaygee Investment P. Ltd. certain loose papers were found and seized from the residential premises of the director of the assessee company Shri Rajesh U Jain. Based on those documents, quantification of scrap sale and income was disclosed by assessee in all these years as under: -

FY	Quantity	Amount realized in cash @ 6/- per kg.
2011-12	43280	2,59,680
2012-13	145737	8,74,422



2013-14	110020	6,60,120
2014-15	91375	5,48,250
	TOTAL	23,42,472

4. The assessee company offered undisclosed income of ₹ 2,59,680/- in the Financial Year 2011-12, relevant to AY 2012-13 and paid the taxes accordingly. The AO initiated the penalty proceedings vide Para 5.4 of the assessment order dated 28.10.2016 passed under section 153C read with section 143(3) of the Act as under: -

"5.4 In light of above discussion and the findings of the search proceedings, I am satisfied that it is the fit case for initiation of penalty under section 271(1)(c) of the I.T. Act for furnishing inaccurate particulars of income and the concealment of the particulars of income."

5. Similar are the notings in AYs 2013-14 and 2014-15 by the AO while initiating the penalty proceedings. The AO also issued noted for issuance of notice under section 271(1)(c) read with section 274 of the Act vide Para 7 as under: -

"7. Assessed under section 153 read with section 143(3) of the I.T. Act, 1961. Allow credit for prepaid taxes, if any after due verification. The computation of interest under section 234A, 234B, 234C & 234D is as per the ITNS-150 which forms a part of this order."

Issue demand notice and challan accordingly. Initiate penalty under section 271(1)(c) of the I.T. Act furnishing inaccurate particulars of income and the concealment of the particulars of income.”

6. In view of the above, the learned Counsel for the assessee stated that the AO himself is not sure about the charge of levy of penalty, whether the charge is for furnishing of inaccurate particulars of income or concealment of particulars of income. Hence, the learned Counsel for the assessee before us stated that the AO levying the penalty and CIT(A) confirmed the same is illegal and invalid. We also noted that even CIT(A) has confirmed the penalty on both limbs, even though a specific plea was raised before him. He noted this fact in Para 8 as under: -

"8. It has been further argued that the penalty show cause notice did not specify the limb under which penalty is initiated and hence penalty is vitiated. I am unable to accept this argument. The assessment order, the penalty show cause notice clearly specify the charge on both the limbs. The penalty order also shows that penalty is levied for both furnishing inaccurate particulars of income as well as concealment of particulars of income. On query, whether there was any prejudice created by not specifying the charge and whether any

query was raised before the assessing officer in this regard, no specific reply was filed. It is not necessary that only one of the charge can apply to the exclusion of the other in all cases. In facts of this case scrap sales was reflected in books but partially. Thus there is both furnishing of inaccurate particulars of income and concealment of particulars of income.”

And finally levied the penalty vide Para 11 as under: -

“11. In light of the above discussion, I am of the considered view that the A.O. was justified in holding that the appellant had concealed particulars of income and had furnished inaccurate particulars of income by not offering the true and correct income from sale of scrap in the original return of income. In these circumstances, I do not find any error or infirmity in the action of the A.O. in levying the minimum penalty on the appellant u/s.271(1)(c) of the Act which is accordingly confirmed. Grounds of appeal on merits of penalty are dismissed.”

7. From the above, we noted that the AO in the assessment order has not initiated the penalty proceedings for a specific charge i.e. for concealment of particulars of income or for furnishing of inaccurate particulars of income. It means that the

AO is not sure about the charge on which he is initiating the penalty under section 271(1)(c) of the Act. We find that this issue is squarely covered by the decision of Hon'ble Bombay High Court in the case of CIT vs Samson Perinchery (2013) 392 ITR 4 (Bom). We noted that at the time of hearing the learned Sr. DR has not doubted the facts of the case but pointed out that there is due application of mind by the AO which can be demonstrated from the discussion in the assessment order and the order of CIT(A), wherein if discussed the reasons for the disallowance of depreciation, he has recorded the satisfaction that the penalty proceedings are initiated under section 271(1)(c) of the Act for concealing of particulars of income as well as for furnishing of inaccurate particulars of income. We are of the view, that the DR has admitted to demonstrate the application of mind by the AO but it is no difference in as much as that the AO in assessment order as initiated the penalty proceedings for both the charges i.e. for furnishing of inaccurate particulars of income as well as concealment of particulars of income. We find that this issue is squarely covered by the decision of Hon'ble Bombay High Court in the case of Samson Perinchery (supra) wherein it is held as under: -

"The impugned order of the Tribunal deleted the penalty imposed upon the Respondent Assessee. This by holding that the initiation of penalty under Section 271(1)(c) of the Act by Assessing Officer was for furnishing inaccurate particulars

of income while the order imposing penalty is for concealment of income. The impugned order holds that the concealment of income and furnishing inaccurate particulars of income carry different connotations. Therefore, 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. Further, the Tribunal also noted that notice issued under Section 274 of the Act is in a standard proforma, without having struck out irrelevant clauses therein. This indicates non application of mind on the part of the Assessing Officer while issuing the penalty notice.”

8. Respectfully, following the Hon'ble High Court, we delete the penalty on this jurisdictional issue. Hence, we need not to go into the merits of the case. This issue of the assessee's appeal is allowed.



9. Similar are the facts in AYs 2013-14 & 2014-15 in ITA Nos. 4736 & 4737 /Mum/2018, hence, taking a consistent view, we delete the penalty in these years also.

10. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 28.11.2019.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 28.11.2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai