

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

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.573 & 574/PUN/2019
निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

Ankeet Cottage Industries,
Plot No. B-19, MIDC Area,
Paithan, Taluka-Paithan,
Distt.-Aurangabad

PAN : AADFA9560C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 1(3), Aurangabad

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.N. Puranik
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 02-12-2019
घोषणा की तारीख / Date of Pronouncement : 16-12-2019

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

The above said two appeals by the assessee against even date orders by the Commissioner of Income Tax (Appeals)-2, Aurangabad [‘CIT(A)'] for assessment years 2011-12 and 2012-13.

Though, the issues in both the appeals are different but however the issues raised are based on same identical facts involving the same

assessee. With the consent of both the parties, we proceed to hear both the appeals together and to pass a consolidated order for the sake of convenience.

First we shall take up ITA No. 573/PUN/2019.

ITA No. 573/PUN/2019, (A.Y. 2011-12)

2. This appeal filed by the assessee against the confirmation of penalty imposed u/s. 271(1)(c) of the Act.

3. Heard both parties and perused the materials available on record. The contention of Shri S.N. Puranik, the ld. AR is that the AO recorded satisfaction that the assessee filed inaccurate particulars relating to bogus purchases and initiated proceedings u/s. 271(1)(c) for filing inaccurate particulars. The AO imposed penalty for concealment of income which is not maintainable in view of decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Samson Perinchery reported in 392 ITR 4.

4. Shri S.P. Walimbe, the DR did not dispute the same.

5. We find that the AO recorded its satisfaction in para 2.9 of the assessment order that the assessee filed inaccurate particulars and initiated penalty proceedings by issuing show caused notice u/s. 271(1)(c) of the Act for filing inaccurate particulars of income which is evident in the last page of assessment order. We note that the AO imposed penalty of Rs.6,07,140/- u/s. 271(1)(c) for concealment of income which is evident from para 5 of penalty order. Therefore, the imposition of penalty is contrary to the findings of AO in assessment proceedings and in view of the

decision of Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax Vs. Samson Perinchery (supra) as rightly pointed by Shri S.N. Puranik, the Id. AR and the penalty imposed and as confirmed by the CIT(A), in our opinion, is not justified.

6. The Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax Vs. Samson Perinchery (supra) has held that where satisfaction has been recorded on one ground and penalty is levied on another, such penalty order bad in law. The relevant extract of the order of Hon'ble High Court reads as under :

*"6. The above submission on the part of the Revenue is in the face of the decision of the Supreme Court in Ashok Pai v/s. CIT 292 ITR 11 [relied upon in Manjunath Cotton & Ginning Factory (supra)] – wherein it is observed that concealment of income and furnishing of inaccurate particulars of income in Section 271(1)(c) of the Act, carry different meanings/ connotations. Therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under Section 271(1)(c) of the Act, for initiation of penalty proceedings will not warrant/ permit penalty being imposed for the other breach. This is more so, as an Assessee would respond to the ground on which the penalty has been initiated/notice issued. **It must, therefore, follow that the order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated, and it cannot be on a fresh ground of which the Assessee has no notice.**"*

7. Respectfully, following the decision of the Hon'ble High Court of Bombay (supra), the order of CIT(A) in confirming the penalty imposed by the AO u/s. 271(1)(c) of the Act is quashed. Grounds raised by the assessee are allowed.

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

ITA No. 574/PUN/2019, (A.Y. 2012-13)

9. In this appeal, the assessee raised three grounds but however the only effective issue remains for our consideration in respect of confirming

the addition at 10% as against the 20% made by the AO in the facts and circumstances of the case.

10. Heard both parties and perused the materials available on record. The assessee is a partnership firm and is engaged in the business of manufacturing and trading of steel and wooden furniture, agricultural implements, readymade garments, educational charts and flex and other allied products. The AO received compact disc containing information regarding Hawala transaction from Sales Tax Department, Mumbai. On examination of such data the AO found assessee had made purchases to the tune of Rs.1,04,19,288/- from Hawala operators. Further, he received details from Sales Tax Department that the Hawala operators admitted that the invoices were issued to accommodate Hawala purchases without there being any business vide their statements and evidence.

11. Basing on which the AO requested the assessee to reconcile the above said Hawala purchases from its books of accounts and also to explain as to why the said Hawala purchases should not be treated as bogus purchases. We note that it was categorically accepted that the said purchases were made through brokers in gray market and basing on which the AO added Rs.18,97,900/- (Rs.94,39,500/- at 20%). The CIT(A) held that the assessee is not able to substantiate the genuineness of alleged purchases, however restricted the said addition to 10% to arrive at such conclusion, the CIT(A) placed reliance on the order dated 28-04-2017 of this Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. Vs. Dy. Commissioner of Income Tax in ITA No. 795/PUN/2014 for assessment year 2010-11. Shri S.N. Puranik, the ld. AR did not controvert the same. We find this Tribunal on similar issues by placing reliance in the case of

M/s. Chhabi Electricals Pvt. Ltd. (supra) confirming the addition at 10% on the bogus Hawala purchases. Therefore, considering the same, we find no infirmity in the order of CIT(A) and it is justified. Thus, grounds raised by the assessee fails and are dismissed.

12. In the result, the appeal of assessee is dismissed.

13. To sum up, the appeals of assessee in ITA No. 573/PUN/2019 is allowed and ITA No. 574/PUN/2019 is dismissed.

Order pronounced in the open court on 16th December, 2019.

Sd/-
(Anil Chaturvedi)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 16th December, 2019

RK

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)-2, Aurangabad
4. The Pr. Commissioner of Income Tax-1, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True copy //

आदेशानुसार / BY ORDER,

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