

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

**BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No.1927/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Manisha Sai and Dare Construction Co.
20, Bhagyoday Housing Society,
Savadi, Ahmednagar-414003
PAN : AAVFM4678B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Ahmednagar Circle, Ahmednagar

.....प्रत्यर्थी / Respondent

Assessee by : S/Shri Ravindra Davekar &
Prasad Bhandari

Revenue by : Shri Hoshang Boman Irani

सुनवाई की तारीख / Date of Hearing : 19.12.2019

घोषणा की तारीख / Date of Pronouncement : 19.12.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeals)-2, Pune dated 28.04.2017 for the assessment year 2013-14
as per the grounds of appeal on record.

2. Though the assessee has preferred multiple grounds of appeal, the crux of the grievance of the assessee in this appeal is against the imposition of penalty levied u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in respect of income declared during the course of survey.

3. The brief facts in this case are that the assessee is a partnership firm and is involved in the business of civil contract. In this case, the return was E-filed showing total income of Rs.21,38,850/-. Subsequently a survey u/s.133A of the Act was conducted on 29.01.2015. In the course of survey, the partner of the assessee firm disclosed an amount of Rs.20 Lakhs as additional income relevant for the assessment year 2013-14. The assessee in the return filed after survey operation not only included the amount of Rs.20 lakhs as additional income but also further offered an amount of Rs.20,74,643/- as additional income after analysis of various documents by the assessee. Thus, the additional income included as a result of survey was to the tune of Rs.40,74,643/-. The Assessing Officer completed the assessment by accepting the revised income as shown by the assessee without making any adjustment therein. Thereafter, the Assessing Officer proceeded to levy penalty u/s.271(1)(c) of the Act and levied an amount of Rs.12,59,100/-. In the First Appellate proceedings, the Ld. CIT(Appeals) confirmed the penalty imposed of Rs.12,59,100/- u/s.271(1)(c) of the Act.

4. Being further aggrieved, assessee preferred this appeal before us. The Ld.AR for the assessee at the time of hearing based his argument referring to grounds submitted that this is a case where the Assessing Officer failed to record valid satisfaction in the assessment order during which the penalty proceedings were initiated. 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. In this regard, he brought our attention to the assessment order as well as the penalty order highlighting the above legal deficiencies. In the assessment order, vide Para 4.1, the Assessing Officer recorded his satisfaction by mentioning both the limbs of section 271(1)(c) of the Act for initiation of penalty proceedings which reads as under:

“4.1..... Since the assessee has furnished inaccurate particulars of income and concealed particulars of income, penalty proceedings u/s.271(1)(c) r.w. Explanation 1 thereto is initiated separately on amount of Rs.40,74,643/-.”

4.1 The Ld. AR for the assessee further submitted that the Assessing Officer vide Para 12.5 in the penalty order dated 23.08.2016 has imposed the penalty u/s.271(1)(c) of the Act by observing as under:

“12.5. With evolution of the text of section 271(1)(c) and explanation 1 thereto, the earlier position of law has tilted considerable in favour of levy of penalty. As the assessee has failed to satisfy the conditions mentioned in explanation 1 to Section 271(1)(c), therefore, the amount added or disallowed in computing the total income of the assessee as a result thereof shall, for the purposes of clause (c) of this sub section (1) of Section 271, be deemed to represent the income in respect of which particulars have been concealed or inaccurate particulars have been furnished.”

4.2 The Ld. AR of the assessee also submitted that this issue is covered by the decision of the Pune Bench of the Tribunal in the case of Machindra Tukaram Pagire in ITA No.1925 & 1926/PUN/2017 for the assessment year

2012-13 & 2013-14 wherein the Tribunal has decided the issue in favour of the assessee.

5. Per Contra, Ld. DR for the Revenue relied on the orders of Assessing Officer/Ld. CIT(A).

6. We have perused the case records and heard the rival contentions on this legal issue. We find that the Pune Bench of the Tribunal in ITA No.1925 & 1926/PUN/2017 (supra.) has decided the similar issue in favour of the assessee by observing as under:

“7. We heard both the parties on this specific legal issue, i.e. recording of proper satisfaction by the Assessing Officer. We have perused the order of the Assessing Officer and find the satisfaction recorded by the Assessing Officer vide Para-10 of the assessment order for initiating the penalty proceedings u/s.271(1)(c) of the Act is relevant for extraction. Therefore, the same is reproduced as under:

*“10..... Issued penalty notice u/s.274 r.w.s u/s.271(1) (c) r.w. explanation 1 for **furnishing inaccurate particulars of income/concealing particulars of income.....**”*

8. We have also perused the penalty order dated 28.09.2016 and find the satisfaction recorded by the Assessing Officer vide Para-11 in the penalty order for levying the penalty u/s.271(1)(c) of the Act is relevant for extraction. The said satisfaction reads as under:

“11. In view of the discussion made in the preceding paragraphs, it is held that the income of Rs.27,01,875/- represents the income in respect of which particulars have been concealed as provided in explanation below section 271(1)(c) of the Act and hence, it is liable for penalty u/s.271(1)(c) of the Act. I am therefore satisfied that this is a fit case for levy of penalty u/s.271(1)(c) of the Act..”

From the above, it is evident that so far as assessment order is concerned, the Assessing Officer has initiated penalty proceedings mentioning both limbs of clause (c) of section 271(1) of the Act i.e. ‘furnishing of inaccurate particulars of income/concealing particulars of income’. However, at the time of levying penalty in the assessment, Assessing Officer has not mentioned any limb of Section 271(1)(c) of the Act. This manner of recording of satisfaction suggests the existence of ambiguity with reference to applicability of specific limb. Therefore, we are of the opinion that considering the above referred binding judgments such penalty order is unsustainable in law legally. The Assessing Officer is under obligation to specify the correct limb at the time of initiation as well as at the time of levy of penalty.

That taking guidance from the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Samson Perinchery (supra.) wherein the Hon'ble Bombay High Court has considered the decision of Hon'ble Karnataka High Court in the case of CIT Vs. Manjunath Cotton and Ginning Factory (supra.), the legal proposition that comes out and which is binding in nature is that 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 of penalty proceedings would be on both the limbs i.e. "for furnishing inaccurate particulars of income" or "concealment of income" or without any limbs of Section 271(1)(c) of the Act. The Assessing Officer has to mention specific limbs while imposing penalty u/s.271(1)(c) of the Act.

9. *The sanctity in terms of natural justice with regard to this proposition is that the assessee under the scheme of welfare legislation which is embedded in the Income Tax Act, 1961 should get an opportunity to prepare himself for the defense as regards to the exact charge on which penalty is imposed upon him u/s. 271(1)(c) of the Act. In the instant case, the charge is vague and therefore, levy of penalty is not warranted.*

Taking totality of facts and legal scenario into consideration, we set aside the order of the Ld. CIT(Appeals) and direct the Assessing Officer to delete the penalty from the hands of the assessee."

Respectfully following our decision referred hereinabove, we set aside the order of the Ld. CIT(Appeals) and direct the Assessing Officer to delete the penalty from the hands of the assessee.

7. In the result, **appeal of the assessee is allowed.**

Order pronounced on 19th day of December, 2019.

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 19th December, 2019.

SB

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

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

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	19.12.2019	Sr.PS/PS
2	Draft placed before author	19.12.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		