

**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. 6917/Mum/2018**

(निर्धारण वर्ष / Assessment Year 2010-11)

Nickunj EDM Wires & Consumables Pvt. Ltd. 4 <sup>th</sup> Floor, Sri Joravar Bhavan, 93, M.K. road, Marine Lines, Mumbai-400 020	बनाम/ Vs.	The Dy. Commissioner of Income Tax, Central Circle 1(2)(2), Room No. 535, Aayakar Bhavan, Maharshi Karve Marg, Mumbai-400 020
<b>(अपीलार्थी / Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायी लेखा सं./ PAN No. AACCN7254N</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Ms Kinal Bhuta, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Ms. Kavita P Kaushik, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	13.01.2020
घोषणा की तारीख / <b>Date of pronouncement:</b>	13.01.2020

**आदेश / ORDER**

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

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-2, Mumbai in Appeal No. CIT(A)-2/IT/10336/2016-17 dated 31.07.2018. The Assessment was framed by the Income Tax Officer, Ward-1(2)(3), Mumbai (in short ITO / AO) for AY 2010-11 vide dated 31.03.2016, under section 143(3) read with section 147 of the Income-tax

Act, 1961 (hereinafter 'the Act'). The penalty was levied by Income Tax Officer- Ward 1(2)(3) under section 271(1)(c) of the Act vide order dated 30.09.2016.

2. At the outset, the learned Counsel for the assessee took us through ground raised in regard to the issue of jurisdiction that the AO has initiated penalty for both the limbs i.e. for concealment of particulars of income as well as for furnishing of inaccurate particulars of income. This appeal relates to levy of penalty by the AO under section 271(1)(c) of the Act in respect of bogus purchases amounting to ₹ 78,12,614/-. The AO levied the penalty and CIT(A) confirmed the penalty.

3. The learned Counsel for the assessee took us through the assessment order and the penalty order levying the penalty under section 271(1)(c) of the Act. The learned Counsel for the assessee stated that the very initiation of penalty is on both limbs and even levied by the AO is on both limbs. The learned Counsel for the assessee took us through the penalty order dated 30.09.2016 and stated that the AO made up his mind that the assessee has furnished inaccurate particulars of income as well as concealed the particulars of income. For this he referred to penalty order, which read as under: -

*".....in the instant case the assessee has furnished inaccurate particulars of income thereby resulting into concealment of income.*

*Therefore, it is easy to infer that had the information not been received from the sales tax department an amount of ₹7,81,261/- would have escaped assessment and would have resulted into a loss to exchequer.*

*Therefore, considering the facts of the case it is to the satisfaction of the undersigned that this is a fit case for imposing the penalty under section 271(1)(c) of the I.T. Act as the assessee has furnished inaccurate particulars of income & concealed income for the relevant assessment year."*

4. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the AO in the assessment order has initiated the penalty proceedings for a specific charge i.e. for furnishing of inaccurate particulars of income, whereas he has levied the penalty for concealment of particulars of income while levying penalty under section 271(1)(c) of the Act vide order dated 30.09.2016. It means that the AO is not sure about the charge on which he is levying the penalty or initiating the penalty. 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 tried to demonstrate the application of mind by the AO but it is of no difference in as much as that the AO in assessment order has 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 striked out irrelevant clauses therein. This indicates non application of mind on the part of the Assessing Officer while issuing the penalty notice."*

5. 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.

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

Order pronounced in the open court on 13.01.2020.

Sd/-

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

Sd/-

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

मुंबई, दिनांक/ Mumbai, Dated: 13.01.2020

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