

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "एक सदस्य" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1671/PUN/2019
निर्धारण वर्ष / Assessment Year : 2010-11

The Income Tax Officer,
Ward 1(4), Nashik

..... अपीलार्थी /
Appellant

बनाम v/s

Shri Jitendra Ravindra Malpure
N-53, SF-1/38/5,
Uttam Nagar, Cidco,
Nashik - 422009

..... प्रत्यर्थी /
Respondent

PAN: AFDPM7516F

Assessee by : None

Revenue by : Shri Bharat Deoraj Shegaonkar

सुनवाई की तारीख / Date of Hearing : 23.01.2020	घोषणा की तारीख / Date of Pronouncement: 27.01.2020
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

This appeal preferred by the Revenue emanates from the order of the Ld. CIT(A)-1, Nashik, dated 22.08.2019, for the assessment year 2010-11.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual stated to be engaged in the business of Trading in electrical goods. In the instant case, assessment order u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') was passed on 25.03.2015 assessing total income at Rs.26,03,190/-, wherein he made an addition of Rs.19,26,253/-. The Assessing Officer has also initiated penalty proceedings for furnishing inaccurate particulars of income and concealment of income u/s 271(1)(c) r.w.s. 274 of the Act. In response to initiation of penalty proceedings, the assessee submitted reply, which was not found acceptable to the Assessing Officer and he levied penalty vide order dated 22.03.2018 by observing that the case of the assessee falls under the ambit of Explanation 1 of the section 271(1)(c) of the I.T. Act, 1961. Aggrieved by the penalty order of Assessing Officer, assessee carried the matter before Ld.CIT(A), who vide consolidated order dt.22.08.2019 (in appeal No.Nsk/CIT(A)-1/44 & 45/2018-19) allowed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal and has raised the following grounds:-

- 1. Whether on the facts and in the circumstances of the case, the Learned CIT(A)-1, Nashik was justified in deleting the penalty of Rs.1,48,803/- for A.Y. 2010-11 on account of alleged bogus purchases from Hawala dealers/parties?*
- 2. Whether on the facts and in the circumstances of the case, the Learned CIT(A)-1, Nashik was justified in deleting the penalty u/s 271(1)(c) on account of purchases treated as bogus when the appellant had not been able to produce the certain parties from whom purchases were made when letters sent to the parties were returned undelivered or the parties did not respond?*

3. *Whether the Learned CIT(A)-1, Nashik erred in assuming that the purchases were only inflated when it was clear from the conduct of the assessee, the parties found missing and results of the investigation of another Government Department (i.e. Sales Tax), that the purchases could not be proved as genuine and therefore the disallowance by the AO was justified?*
4. *Whether the Learned CIT(A)-1, Nashik erred in presuming that simply because no addition was made in the case of Sales, it was accepted as genuine and further assuming that thereby purchases should be genuine?*
5. *The appellant prays that the order of the Learned CIT(A)-1, Nashik may please be cancelled and the order of Assessing officer may please be restored.*

3. On the date of hearing, none appeared on behalf of the assessee nor any adjournment application was filed. Further I find that the issue raised in the present appeal is covered by various decisions of Pune ITAT. I therefore, proceed to dispose of the appeal *ex-parte qua* the assessee based on the material available on record and after hearing the Ld. DR.

4. Before me Ld. DR. took me through the order of Assessing Officer and supported the order of Assessing Officer.

5. I have heard the Ld. DR and perused the material on record. The issue in the present case is with respect to levy of penalty u/s 271(1)(c) of the Act. In the present case, penalty of Rs.1,48,803/- has been levied on addition of Rs.4,81,563/-. The perusal of assessment order passed u/s 143(3) r.w.s. 147 of the Act reveals that in the assessment order Assessing Officer had recorded satisfaction namely for furnishing inaccurate particulars of income and concealment of income u/s 271(1)(c) r.w.s. 274 of the Act. i.e. he has recorded

satisfaction for both the limbs for levy of penalty. Thereafter, in the penalty order passed u/s 271(1)(c) r.w.s. 274 of the Act, Assessing Officer held that the case of the assessee falls under the ambit of Explanation 1 of the section 271(1)(c) of the I.T. Act, 1961 and accordingly levied the penalty. It is a settled law that while levying penalty for concealment, the Assessing Officer has to record satisfaction and thereafter come to a finding in respect of one of the limbs, which is specified under section 271(1)(c) of the Act. The first step is to record satisfaction while completing the assessment as to whether the assessee had concealed his income or furnished inaccurate particulars of income. Thereafter, notice u/s 274 read with Section 271(1)(c) of the Act is to be issued to the assessee. The Assessing Officer thereafter has to levy penalty under Section 271(1)(c) of the Act for non-satisfaction of either of the limbs. While completing the assessment, the Assessing Officer has to come to a finding as to whether the assessee has concealed his income or furnished inaccurate particulars of income. The Hon'ble Bombay High Court in the case of CIT Vs. Samson Perinchery reported in (2017) 392 ITR 4 (Bom) held that where initiation of penalty is one limb and the levy of penalty is on other limb, then in the absence of proper show cause notice to the assessee, there is no merit in levy of penalty.

6. Considering the facts of the present case in the light of the decision of Hon'ble Bombay High Court in the case of CIT Vs. Samson

Perinchery (supra), I find no reasons to interfere with the order of CIT(A). **I accordingly, dismiss the grounds of Revenue.**

7. **In the result, the appeal of the Revenue is dismissed.**

Order pronounced on 27th day of January, 2020.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 27th January, 2020.

GCVSR

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)-1, Nashik
4. आयकर आयुक्त / The Pr.CIT-1, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार/ BY ORDER

// True Copy //

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