

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

BEFORE SHRI D. KARUNAKARA RAO, AM AND  
SHRI LALIET KUMAR, JM

आयकर अपील सं. / ITA No.1877/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2013-14

Ajinkya Dilip Kotepatil,  
C/o. S.B. Boob & Associates,  
F-1, Sumangal Plaza, HDFC Cross Road,  
Canada Corner, Nashik-422005.

PAN : CQXPK0159D

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-1(3),  
Nashik.

.....प्रत्यर्थी / Respondent

Assessee by : None  
Revenue by : Shri Alok Malviya

सुनवाई की तारीख / Date of Hearing : 11.02.2020  
घोषणा की तारीख / Date of Pronouncement : 12.02.2020

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM:**

This appeal filed by the assessee is against the order of the CIT(A)-1, Nashik dated 13.06.2017 for the assessment year 2013-14.

2. The grounds raised by the assessee are as under :-

"1. The assessee had voluntarily surrendered the income during the course of assessment proceeding and paid almost taxes accordingly. However, the AO and Appellate Commissioner erred and levied and confirmed the penalty.

2. This was the first time when the assessee was scrutinized and he is a student after all. However, he had declared additional income and paid the taxes and showed his bonafide intention.

3. *The claim of section 54 was required to be withdrawn because of the sanction and completion could not be obtained from the proper authority because of the policy matter of the Nashik Municipal Corporation.*

4. *The detail submission and any additional grounds of appeal will be submitted before or during the course of appeal hearing. It may please be allowed.*

5. *The withdrawal of the benefit of sec.54F is technical in nature and so motto done by the assessee. In court of law a lenient view have been taken and the assessee is saved from penal proceedings. It is requested it may please be considered and appeal may please be allowed.”*

3. Before us, none to represent the assessee despite service of notice by the ITAT. Therefore, this appeal is being decided on the basis of material available on record and after hearing of the ld. DR.

4. Briefly stated the relevant facts include that the assessee is an individual and earned income from capital gain and income from other sources. The assessee filed the return of income declaring total income of Rs.1,98,719/- after claiming deduction u/s 54B, 54C, 54D, 54G and 54GA of the Act. At the end of the assessment u/s 143(3) of the Act, the Assessing Officer assessed the total income of the assessee at Rs.60,42,935/- after making certain additions on account of different heads. Further, the Assessing Officer initiated the penalty proceeding stating that *“Hence penalty proceeding u/s 271(1)(c) are initiated separately.”* (para 5 of the assessment order).

5. In the penalty order, the Assessing Officer clearly stated that the levy of penalty is for the default of *“..... concealed the particulars of his income to the extent of Rs.60,39,909/-”* (para 10 of the penalty order).

6. The CIT(A), relying on the various decisions of the Tribunal and the judgements of the Hon'ble High Court as well as the Hon'ble Supreme Court, confirmed the penalty as levied by the Assessing Officer. The contents of para 5 onwards of the appellate order are relevant in this regard.

7. Aggrieved with the said decision of the CIT(A), the assessee is in appeal before the Tribunal with the above extracted ground.

8. It is seen from the record that the order of the CIT(A) shall have to be set-aside on the legal issue relating to the ambiguity in the mind of the Assessing Officer while dealing with the initiation and levy of penalty. 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, we find that the penalty levied by the Assessing Officer is unsustainable in law and the same is wrongly upheld by the CIT(A).

9. On the other hand, ld. DR for the Revenue heavily relied on the orders of the authorities below.

10. We heard the ld. DR for the Revenue on this legal issue and also perused the material available on record. We find that this is a case where the Assessing Officer failed to record proper satisfaction while initiating and

levying the penalty u/s 271(1)(c) of the Act. In this regard, we perused the orders of the Revenue authorities. On perusal of para 5 of the assessment order, we find the following is the reasons for initiation of penalty proceedings :-

*“Hence penalty proceeding u/s 271(1)(c) are initiated separately.”*

11. Further, we also perused the penalty order passed by the Assessing Officer on 26.07.2016. On perusal of penalty order, we find the following is the reasons for levy of penalty u/s 271(1)(c) of the Act :-

*“10. .... concealed the particulars of his income to the extent of Rs.60,39,909/-”*

12. The above extracts reveal that the Assessing Officer suffers from ambiguity in his mind while recording the satisfaction at the time of initiation of penalty proceedings u/s 271(1)(c) of the Act.

13. Considering the above, we are of the opinion that the legal requirement of making a clear cut reference to the applicable limb of clause (c) of section 271(1) of the Act, is not met by the Assessing Officer while initiating and levying the penalty u/s 271(1)(c) of the Act. Thus, the satisfaction of the Assessing Officer suffers from ambiguity in his mind.

14. Therefore, considering the above referred binding judgments, we are of the view that such penalty is unsustainable in law legally. It is a settled legal proposition that the Assessing Officer is under obligation to specify the

appropriate limb of clause (c) of section 271(1) of the Act at the time of initiation as well as at the time of levy of penalty. In view of the above deliberation on this issue, without going into the merits of the case, we set-aside the order of the CIT(A) and direct the Assessing Officer to delete the entire penalty imposed by him. Accordingly, the ground raised by the assessee is allowed on legal issue.

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

Order pronounced on this 12<sup>th</sup> day of February, 2020.

**Sd/-**

**(LALIET KUMAR)**

न्यायिक सदस्य/JUDICIAL MEMBER

**Sd/-**

**(D. KARUNAKARA RAO)**

लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 12<sup>th</sup> February, 2020.

Sujeet

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

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

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.