

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

**BEFORE SHRI George Mathan, Judicial Member and
Shri Anil Chaturvedi, Accountant Member**

**I.T.A. No. 2140 to 2144/PUN/2017
Assessment Years : 2002-03 to 2006-07**

Avinash J. Naik,
F-4 Tuljai Circle, Nagala Park,
Kolhapur.

PAN ; AASPN 4101 F

Appellant

Vs.

I.T.O. Ward 1(4), Kolhapur

Respondent

Appellant by : Shri M.K. Kulkarni
Respondent by : Shri Rajendra B. Dond

Date of hearing : 20-02-2020
Date of Pronouncement: 21 -02-2020

ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER:

These five appeals filed by the assessee are directed against consolidated order of the learned CIT(A)-2, Kolhapur in Appeal No. KOP/264, 259, 260, 261 & 262/2009-10 for A.Y. No. 2002-03 to 2006-07 dated 15-1-2010 respectively confirming the levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to "the Act").

2. Shri M.K. Kulkarni, is represented for the assessee and Shri Rajendra B. Dond is represented for the Revenue.

3. It was submitted by the learned A.R. that the penalty has been levied u/s 271(1)(c) of the Act. It was his submission that there was survey on the premises of the assessee who is an Architect at Kolhapur and was having professional income as also salary income. The assessee had filed returns of income for relevant assessment years disclosing net taxable income at Rs. 1,50,000/- for A.Y. 2002-03, Rs. 1,66,000/- for A.Y. 2003-04, Rs. 1,88,500/- for A.Y. 2004-05, Rs. 2,50,000/- for A.Y. 2005-06 and Rs. 3,00,000/- for A.Y. 2006-07. Notices have been issued u/s 148 of the Act on 12-2-2007 and in response to the same, the assessee had filed his returns of income for all the five assessment years on 7-3-2007. For A.Y. 2002-03, the assessee had disclosed the income at Rs. 1,59,829/- and agriculture income of Rs. 1,00,000/-, for A.Y. the assessee had disclosed income of Rs. 1,65,610/- and agricultural income of Rs. 1,00,000/-, for A.Y. 2004-05, the assessee had disclosed income of Rs. 1,88,618/- and agricultural income of Rs. 1,00,000/-, for A.Y. 2005-06 the assessee had disclosed income of Rs. 2,56,800/- and agricultural income of Rs. 1,50,000/- and for A.Y. 2006-07 the assessee had disclosed income of Rs. 3,00,400/- and the agricultural income of Rs. 1,80,000/-.

4. The assessments came to be completed wherein the A.O had made adhoc disallowances out of petrol expenses, telephone expenses, depreciation and construction expenses. On appeal, the learned CIT(A) had deleted the additions made for all the five years and consequently, the assessed income was restored to the returned income. A show cause notice for levy of penalty u/s 271(1)(c) of the Act had been issued to the assessee and the assessee had responded explaining the facts vide letter dated 7-9-2009. It was also categorically admitted that the assessee had furnished returns of income and had also paid all the taxes on the income declared. It was his submission that

in the assessment orders, penalty has been initiated for concealing the particulars of income. However, in the penalty order, the penalty has been levied for furnishing of inaccurate particular of assessee's income. It was his submission that at the outset, the explanation given by the assessee has not been rejected. It was also his submission that the penalty has been levied for reasons other than the reasons raised in the initiation proceedings.

5. In reply, the learned D.R has vehemently supported order of the A.O and the CIT(A). It was his submission that the penalty as confirmed by the learned CIT(A) was liable to be confirmed.

6. We have heard the rival contentions and perused the material on record. At the outset, a perusal of the penalty order shows that the A.O has rejected the assessee's submission as irrelevant and not tenable. The explanation given by the assessee has not been found to be false or not plausible. In view of the principles laid down by the Hon'ble Supreme Court in the case of CIT Bangalore Vs. Ashok T. Pai (2007) 292 ITR 11 (SC), the penalty is not leviable in the present case insofar as explanation of the assessee is a plausible explanation. Mere rejection of an explanation of the assessee will not make the assessee liable for penalty. Further, a perusal of the assessment orders clearly shows that the penalty has been initiated for concealment of income. A perusal of the penalty order shows that the A.O has levied the penalty for furnishing of inaccurate particulars of income. The two reasons are different. The A.O has initiated penalty for one reason but has levied the penalty for another. Such penalty cannot be confirmed in view of the judgment of the Hon'ble Supreme Court in the case of CIT Vs. SSA'S Emerald Meadow reported at (2016) 73 Taxmann.com 248 (SC), as also the decision of Hon'ble High Court of Bombay

in the case of Principal C.I.T. (Central) Bangaluru Vs. Goa Coastal Resorts and Recreation (P) Ltd. reported at (2020) 113 taxmann.com 574 (Bombay) as also the decision of co-ordinate Bench of this Tribunal in ITA No. 1718/PUN/2017 and others dated 19-07-2019. This being so, respectfully following the principles laid down by the Hon'ble Supreme Court in the case of SSA'S Emerald Meadows (supra), as also the decision of the Hon'ble Bombay High Court in the case of Goa Coastal Resorts and Recreation (P) Ltd (supra) and also decision of the co-ordinate Bench of this Tribunal cited supra, the penalty levied by the A.O and confirmed by the learned CIT(A) stands deleted.

7. In the result, all the appeals of the assessee are allowed.

Order pronounced in open Court on this 21st day of February 2020.

Sd/-
(ANIL CHATURVEDI)
Accountant Member

sd/-
(GEORGE MATHAN)
Judicial Member

Pune; Dated : 21st February 2020.

Ankam

Copy of the Order is forwarded to :

1. Assessee
2. Respondent
3. The Pr. CCIT Pune
4. The Pr. CIT 3 Pune
5. The Addl. CIT Range 6, Pune
6. The Assessing Officer
7. The D.R. ITAT Pune Bench 'B'
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Sr. Private Secretary
ITAT Pune Bench, Pune

1	Draft dictated on	20.02.2020	Sr. PS/PS
2	Draft placed before author	20.02.2020	Sr. PS/PS
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11	Date of dispatch of order		