

**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. 2309/PUN/2017
Assessment Year : 2008-09**

Shri Srichand G. Galani
'E' Wing, KK Market,
Pune Satara Road,
Near Shankar Maharaj Math,
Pune-411 043.

ABJPG 4152 H

Appellant

Vs.

The Dy. Commissioner of Income Tax,
Circle 6, Pune

Respondent

Appellant by : Shri V.L. Jain
Respondent by : Shri Rajendra B. Dond

Date of hearing : 18-02-2020
Date of Pronouncement: 20-02-2020

ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against order of the learned CIT(A) 4, Pune in Appeal No. PN/CIT(A)-5/Dy.CIT Cir.6, Pune/138/2016-17/305 for A.Y. 2008-09 dated 19-5-2017 confirming the levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to "the Act").

2. Shri V.L. Jain 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 in the course of assessment proceedings, the A.O has initiated penalty proceedings in para 3.7 of his order holding that the assessee has filed inaccurate particulars of his income. It was his submission that in the show cause notice u/s 274 read with sec. 271(1)(c) of the Act, dated 22-12-2010, the A.O has not cancelled or cut-off either of the process for concealment or for furnishing inaccurate particulars of income. It was his further submission that the learned A.O in para 8 of his order holds that the assessee has furnished inaccurate particulars and concealed his income. It was his submission that the A.O has not brought out for what purposes, penalty is being initiated and consequently the penalty is not leviable 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.

4. 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.

5. We have heard the rival contentions and perused the material on record. A perusal of the assessment order clearly shows that the A.O has initiated the penalty proceedings for furnishing of inaccurate particulars. However, the penalty has been levied for concealment of income. Thus, 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 Hon'ble Supreme Court judgment 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). 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.

6. In the result, both the appeals of the assessee are allowed.

Order pronounced in open Court on this 20th day of February 2020.

Sd/-
(ANIL CHATURVEDI)
Accountant Member

sd/-
(GEORGE MATHAN)
Judicial Member

Pune; Dated : 20th 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'
8. Guard file

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By order

Sr. Private Secretary
ITAT Pune Bench, Pune

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2	Draft placed before author	18.02.2020	Sr. PS/PS
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