

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2474/PUN/2017
निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Klassic Constructions (Nashik) Pvt. Ltd.,
C/o M/s. Klassic Constructions Pvt. Ltd.,
Bhasin House, Unique Co-op. Hsg. So.,
Behind Pratap Nagar, Seven Bunglow,
Andheri (W), Mumbai-400058

PAN : AADCK3481H

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Circle – 3(1), Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Joshi
Revenue by : Ms. Shabana Parveen

सुनवाई की तारीख / Date of Hearing : 02-07-2020

घोषणा की तारीख / Date of Pronouncement : 06-07-2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 01-08-2017 passed by the Commissioner of Income Tax (Appeals)-1, Nashik [‘CIT(A)’] for assessment year 2010-11 wherein he confirmed the penalty u/s. 271(1)(c) of the Act.

2. Besides main grounds of appeal filed along with memo of appeal the assessee raised additional grounds of appeal raising a legal issue that the AO initiating the penalty proceedings on one limb and imposing penalty under both the limbs is not maintainable.

3. The brief facts relating to the issue are that the assessee is a company and engaged in the business of construction. The assessee filed its return of income declaring a total income of Rs.40,98,570/- and in scrutiny, the AO assessed the total income of assessee at Rs.58,62,370/- inter alia making addition of Rs.16,23,170/- as non-genuine purchases basing on the information received from Sales Tax Department. In the first appellate proceedings, the CIT(A) restricted the addition to Rs.4,86,951/- being 30% of Rs.16,23,170/- on the basis of estimation. To buy peace and to avoid further litigation, the assessee accepted the addition to an extent of Rs.4,86,951/- made by the CIT(A). As the matter stood thus that the AO initiated penalty proceedings u/s. 271(1)(c) on the charge that the assessee concealed particulars of income and imposed a penalty of Rs.1,50,468/- being minimum @ 100% on both charges i.e. concealment of income and furnishing inaccurate particulars of income. The CIT(A) confirmed the same.

4. Heard both parties and perused the material available on record. Before us, the contentions of Shri Sanket Joshi, the ld. AR is that the Assessing Officer initiated penalty proceedings u/s. 271(1)(c) of the Act on a charge that the assessee concealed the particulars of income and imposed penalty @ 100% on both the charges i.e. concealment of income and furnishing inaccurate particulars of income which is not maintainable

to the fact that the Assessing Officer did not mention specific charge either it is a concealment of income or furnishing inaccurate particulars of income and argued that the penalty confirmed by the CIT(A) is not maintainable. The Id. DR vehemently opposed the additional grounds as well as the submissions of Id. AR and argued that the CIT(A) confirmed the addition to an extent of 30% in the quantum proceedings which was accepted by the assessee and the penalty imposed by the Assessing Officer and as confirmed by the CIT(A) should be confirmed. We find that this issue is covered by this Tribunal by consolidated order dated 27-03-2019 in the case of Shri Narendra P. Musale Vs. ITO in ITA Nos. 2226, 1520, 1521, 1853/PUN/2016 and ITA No. 153/PUN/2017 for the A.Ys. 2011-12, 2012-13 and 2013-14 wherein this Tribunal by following the decision of Hon'ble High Court of Bombay in the case of Commissioner of Income Tax Vs. Samson Perinchery reported in 392 ITR 4 held that the AO should be clear as to which limb of two charges under which the penalty is to be imposed falling which the penalty imposed on both the limbs contrary to the findings in assessment order is not maintainable. There is no dispute that the AO initiated penalty proceedings on the charge of concealment of income and imposed penalty on both the charges. It is clear that the AO initiated penalty proceedings on one limb and imposed penalty on two limbs, in our opinion penalty as confirmed by the CIT(A) is not maintainable. Therefore, the penalty imposed by the AO and confirmed by the CIT(A) is deleted. Thus, additional grounds raised by the assessee are allowed.

5. In view of our decision in allowing additional grounds in favour of the assessee, the grounds of appeal raised by the assessee becomes academic and requiring no adjudication.

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

Order pronounced in the open court on 06th July, 2020.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 06th July, 2020.

RK

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.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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