

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

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 72/PUN/2018
निर्धारण वर्ष / Assessment Year : 2013-14

The Deputy Commissioner of Income Tax,
Circle-3, Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Sukanta Thali
636, Abhinandan, Pulachiwadi,
Deccan Gymkhana,
Pune-411 004.
PAN : ABAFS7613Q

.....प्रत्यर्थी / Respondent

Revenue by : Shri S.P Walimbe
Assessee by : Shri Pramod Shingte

सुनवाई की तारीख / Date of Hearing : 28.05.2021
घोषणा की तारीख / Date of Pronouncement : 31.05.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the Revenue emanates from the order of the
Ld. CIT(Appeal), Pune-3 dated 09.10.2017 for the assessment year 2013-14
as per the following grounds of appeal on record :

"1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty levied u/s.271(1)(c) of the I.T. Act of Rs.76,87,169/- without appreciating the fact that the assessee disclosed unaccounted income of Rs.2.50 Crores during the survey action u/s.133A of the Act, conducted on the assessee.

2. On the facts and circumstances of the case, the Ld. CIT(A) failed to appreciate the fact that the disclosed unaccounted income was never part of books of accounts of the assessee and had there been no survey action on the assessee, the income of Rs.2.50 crores would have escaped assessment. Therefore, the income declared in the return filed after the date of survey, cannot be considered as 'voluntary'.

3. On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the penalty without appreciating the decision of Hon'ble Supreme Court in the case of MAK Data Pvt. Ltd. Vs. CIT (2013) 358 ITR 593 (SC) wherein offer of surrender of amount after detection by Assessing Officer in search conducted was not considered as being voluntary in nature and the Apex Court justified levying of penalty u/s.271(1)(c).

4. The appellant prayed to be allowed to add, amend, modify, rectify, delete or raise any grounds of appeal during the course of appellate proceedings."

2. In this case, the assessee is engaged in the business of running restaurant. A survey action u/s.133 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act) was conducted in the assessee's case on 17.07.2013 during which it was revealed that the assessee was not accounting all the sales receipts in the books of accounts. When confronted with the evidences, one of the partner admitted that part of the receipts found recorded in the impounded registers were not recorded in the books of accounts and therefore, offered an amount of Rs.2.50crores to be surrendered as unaccounted income. Subsequent to this survey action, the assessee first time filed return of income on 31.10.2013 disclosing the aforesaid admitted undisclosed income of Rs.2.50 crores apart from its regular income. The assessment was completed u/s.143(3) of the Act on 21.03.2016 accepting the returned income of the assessee. That however, the Assessing Officer was of the opinion, had there been no survey action, the assessee would not have disclosed his admitted income and therefore, initiated penalty proceeding u/s.271(1)(c) of the Act for concealment of income.

3. During the penalty proceedings, in response to the notice issued u/s.271(1)(c) r.w.s. 274 of the Act, the assessee submitted before the

Assessing Officer that it had offered income to buy peace of mind and since the admitted undisclosed income was disclosed in the return of income filed, penalty u/s. 271(1)(c) of the Act should not be levied. The argument of the assessee did not find favour with the Assessing Officer and penalty was levied u/s.271(1)(c) of the Act in respect of the unaccounted income of Rs.2.50 crores at the rate of 100% which worked out at Rs.76,87,169/-.

4. The Ld. CIT(Appeals) in his order vide Para No. 5.3.2 observed that the Assessing Officer relied heavily on the decision of the Hon'ble Supreme Court in the case of **MAK Data Pvt. Ltd. Vs. CIT, (2013) 358 ITR 593 (SC)**. Thereafter, it was analysed that the facts in this referred case was substantially different since in the case before the Hon'ble Supreme Court (supra.), the surrendered income was not included in the original return of income but the same was surrendered during the course of assessment proceedings. However, in the case of the assessee before us, the assessee had included the surrendered income in his original return of income filed on 31.10.2013. In this backdrop, the Hon'ble Delhi High Court in the case of **CIT Vs. M/s. SAS Pharmaceuticals, 11 taxman.com 207 (Delhi)** has held that “..... No doubt, the discrepancies were found during the survey. This has yielded income from the assessee in the form of amount surrendered by the assessee. Presently, we are not concerned with the assessment of income but the moot question is to whether this would attract penalty upon the assessee under the provisions of section 271(1)(c) of the Act. Obviously, no penalty can be imposed unless the conditions stipulated in the said provisions are duly and unambiguously satisfied. Since the assessee was exposed during survey, may be, it would have not disclosed the income but for the said survey. However, there cannot be any penalty only on surmises, conjectures and possibilities. Section 271(1)(c) of the Act has to be construed strictly. Unless it is found that

there is actually a concealment or non-disclosure of the particulars of income, penalty cannot be imposed. There is no such concealment or non-disclosure as the assessee had made a complete disclosure in the income tax return and offered the surrendered amount for the purposes of tax.”

5. That further the Hon'ble Supreme Court in the case of **CIT Vs. Reliance Petroproducts (P) Ltd., (2010) 322 ITR 158 (SC)**, the very basis for imposing penalty u/s.271(1)(c) of the Act was analysed and the principle emerged was that the alleged concealment of income or furnishing of inaccurate particulars of income by the assessee has to be determined from income tax returned filed by the assessee.

6. Similarly, the Hon'ble Madras High Court in the case of **CIT-Chennai Vs. Smt. Anita Kumaran, 2017-(IT2)-GJX-0083-MAD** wherein the decision in the Case of MAK Data Pvt. Ltd. Vs. CIT (supra.) was considered and was distinguished on facts. Based on the facts of the case of CIT-Chennai Vs. Smt. Anita Kumaran (supra.), the Hon'ble Madras High Court has held as follows:

“We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under section 271(1)(c) of the Act.”

7. We are in conformity with the view taken by the Ld. CIT(Appeals) and findings arrived at based on the facts of the case of the assessee as well as various judicial pronouncements placed on record. In the case of the assessee survey action took place on 17.07.2013 and the amount of Rs.2.50 Crores was surrendered as unaccounted income in the return of income filed by the assessee on 31.10.2013. Therefore, the assessee had in the return of income

filed on 31.10.2013 had disclosed the said surrendered unaccounted income of Rs.2.50 Crores apart from its regular income. Taking guidance from the decisions of the Hon'ble Supreme Court in the case of Reliance Petroproducts (supra.) as well as the decision of the Hon'ble Delhi High Court (supra.) and Hon'ble Madras High Court (supra.), it is clearly evident that any concealment of income or furnishing of inaccurate particulars of income has to be determined from the return of income filed by the assessee. That further proceedings u/s.271(1)(c) of the Act, is a separate proceedings than from the assessment proceedings and the omission or error i.e. concealment of income or furnishing of inaccurate particulars of income should come out specifically from the return of income filed by the assessee before the Department. There is no scope for any guess work or surmises or any hypothetical situation for imposing penalty u/s.271(1)(c) of the Act. It is an undisputed fact that the amount of Rs.2.50 Crores was disclosed in the return of income by the assessee and it was accepted by the Department. Taking the totality of facts and circumstances, we are of the considered view that in this case of the assessee, it is not a fit case for imposing penalty u/s.271(1)(c) of the Act. In view thereof, the findings of the Ld. CIT(Appeals) does not call for any interference and relief provided to the assessee is hereby sustained.

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

Order pronounced on 31st day of May, 2021.

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st May, 2021

SB

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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

		Date	
1	Draft dictated on	28.05.2021	Sr.PS/PS
2	Draft placed before author	31.05.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		