

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

(Through Virtual Court)

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

आयकर अपील सं. / ITA No. 702/PUN/2018
निर्धारण वर्ष / Assessment Year : 2011-12

Vidhu Puri
H 604, Maestros, Salunke Vihar Road,
Wanwadi, Pune-411 040
PAN : AFUPP4746F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-7, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Vidhu Puri
Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 01.06.2021
घोषणा की तारीख / Date of Pronouncement : 01.06.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeals)-8, Pune dated 15.01.2018 for the assessment year 2011-12
as per the following grounds of appeal on record :

*"1. The learned Deputy Commissioner, Circle-7 Pune as well as learned
Commissioner of Income Tax (Appeals) has erred in law as well as in
facts while levying penalty on provident fund received during the year.
Section 271(1)(c) clearly states that penalty can be levied when there is
concealment of income or inaccurate particulars of income. In the given*

case the assessee had no intention to conceal the income. He was under bona-fide believe that PF income is tax free.

2. Further when he received the notice u/s.143(2) he immediately offered to pay tax on the untaxed portion of the PF amount in this very first instance.

3. The bank interest of Rs.30,435 was also offered for tax in the very first submission.

4. The amount of penalty should be after reducing the tax withheld by Max New York Life Insurance of Rs.1,89,732 by the payee of the provident fund.

5. The assessee reserves the right to add, modify, alter, cancel any of the aforesaid ground of appeal.”

2. At the time of hearing, the assessee himself appeared to represent his case.

3. In this case, the assessee is an individual and had filed return of income on 14.07.2011 declaring total income of Rs.29,53,280/-. The case of the assessee was selected for scrutiny through CASS and statutory notices were issued accordingly. During the assessment proceedings, the Assessing Officer observed that the assessee had received interest of Rs.8,536/- from his savings bank account and further, interest of Rs.21,899/- on his FD account. However, the assessee has not shown these amounts in his return of income and therefore, the Assessing Officer added the sum of Rs.30,435/- to the total income of the assessee. The Assessing Officer also observed that the assessee had withdrawn provident fund balance of Rs.8,30,845/- from his previous employer Max New Year Life Insurance Company on which taxes of Rs.1,89,732/- had been deducted. The assessee did not show these in his return of income. The said amount was added back by the Assessing Officer and also penalty proceedings u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') were initiated on both these additions. Thereafter, penalty of Rs.2,66,135/- was levied vide order dated 27.06.2014.

4. That in the appeal before the Ld. CIT(Appeals), the assessee had filed written submissions and had submitted that the penalty levied on interest income and provident fund which were not shown in the return of income was bona-fide mistake and with the belief that the same were not taxable since already taxes were deducted at source. These arguments did not find favour with the Ld. CIT(Appeals) and as per reasons given at Para 6 of the Ld. CIT(Appeals)'s order, the order of the Assessing Officer imposing penalty u/s.271(1)(c) of the Act was upheld.

5. That on perusal of the documents on record and analysing the facts and circumstances in this case, we find that it is an undisputed fact that on the provident fund amount of Rs.1,89,732/-, taxes had been deducted at source. Therefore, there is no prejudice caused to the Revenue. The Ld. DR could not demonstrate by furnishing materials on record that due to the action or inaction of the assessee, the Revenue has suffered loss or that there has been deliberate concealment of income or furnishing of inaccurate particulars of income.

6. That the Hon'ble Supreme Court in the case of **CIT Vs. Reliance Petroproducts , 322 ITR 158 (SC)** has held that there has to be concealment of income or furnishing of inaccurate particulars of income in order to levy penalty u/s.271(1) of the Act. In this case, when the taxes have been deducted at source in respect to the amount not shown in the return of income which the assessee claims as a bona-fide mistake, firstly, there is no loss caused to the Revenue and secondly, the Department has not demonstrated that the assessee has deliberately furnished inaccurate particulars of income or has concealed his income.

7. The Hon'ble Karnataka High Court in the case of **CIT & Anr. v. Manjunatha Cotton and Ginning Factory, 359 ITR 565 (Karn.)** has opined that since penalty proceedings are separate proceedings than that with assessment, the charges must be specific and facts and circumstances should be demonstrate that there is concealment of income or furnishing of inaccurate particulars of income. In another case of **CIT v. SSA's Emerald Meadows [2016] 73 taxmann.com 241**, wherein the Hon'ble Karnataka High Court following its own decision in the case of CIT v. Manjunatha Cotton & Ginning factory (supra) took a view that imposing of penalty u/s 271(1)(c) of the Act is bad in law and invalid for the reason that the show cause notice u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income. The charge has to be specific in accordance with the facts of the case.

8. We also find that Section 273B of the Act provides a shelter to the assessee that in case reasonable cause is explained by the assessee, penalty u/s.271(1)(c) of the Act would not be levied. In the instant case of the assessee where there is no loss caused to the Revenue and the Department has not shown any deliberate mis-conduct on the part of the assessee, just simply refusing the submissions of the assessee, penalty u/s.271(1)(c) of the Act cannot be imposed until and unless, the Revenue proves with evidences contrary facts and situations. Penalty proceeding is a separate proceedings from that of the assessment proceedings. In view of above, in our considered opinion, it is not a fit case for imposing penalty u/s.271(1)(c) of the Act and therefore, we set aside the order of the Ld. CIT(Appeals) and direct the Assessing Officer to delete the penalty from the hands of the assessee.

9. In the result, **appeal of the assessee is allowed.**

Order pronounced in Open Court on 1st Day of June, 2021.

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01st June, 2021
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-8, Pune.
4. The Pr. CIT-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" 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	01.06.2021	Sr.PS/PS
2	Draft placed before author	01.06.2021	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		