

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

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

आयकर अपील सं. / ITA Nos.826, 827 & 828/PUN/2018
निर्धारण वर्ष / Assessment Years : 2008-09, 2009-10 & 2010-11

M/s. Safe Lifters,
Office No. 5, 6, Pandol Apartments,
160, M G Road, Pune-411001

PAN : AASFS5535L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle – 4, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rahul Kaul
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 23-12-2021
घोषणा की तारीख / Date of Pronouncement : 10-01-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

These three appeals filed by the assessee against the common order dated 07-02-2018 passed by the Commissioner of Income Tax (Appeals)-13, Pune [‘CIT(A)'] for assessment years 2008-09, 2009-10 and 2010-11, respectively.

2. We note that the issues raised in all the three appeals are similar basing on the same identical facts. Therefore, with the consent of both the parties, we proceed to hear all these three appeals together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up appeal in ITA No. 826/PUN/2018 for A.Y. 2008-09.

4. The assessee raised four grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) is justified in confirming the penalty imposed by the AO u/s. 271(1)(c) of the Act in the facts and circumstances of the case.

5. Heard both the parties and perused the material available on record. We note that the assessee is a registered partnership firm engaged in the business of trading of steel material. A survey was conducted u/s. 133A of the Act in the premises of the assessee on 22-10-2012, during which that the purchase of certain parties in respect of purchase bills were not verifiable. According to the respondent-revenue a statement under oath of Mr. Kaid Lokhandwala was taken and he admitted an additional income of Rs.53,20,062/- on account of bogus purchases for the A.Y. 2008-09. In the reopening proceedings, the assessee filed return of income declaring a total income of Rs.1,11,74,632/- which is inclusive of the additional income as disclosed under statement during the course of survey. The AO under scrutiny issued notice u/s. 143(2) of the Act. During the course of said reassessment proceedings, we note that the said Mr. Kaid

Lokhandwala stated that the assessee has made actual purchases from the market against which the assessee received bills from those parties and also made payments to them through account payee cheque, but, however, he admitted that he is unable to prove the genuineness of these parties to the extent required by the respondent-revenue. Further, we note that he stated that in order to avoid litigation and to buy peace of mind he voluntarily disclosed Rs.53,20,062/- as additional income which is over and above its normal income for A.Y. 2008-09. According to the AO, the said bogus purchases were disclosed by the assessee only after detection by the Department in survey, the action of which constitutes furnishing of inaccurate particulars of income, thereby, penalty of Rs.16,45,000/- was imposed u/s. 271(1)(c) of the Act. The CIT(A) in its composite order observed the admission of additional income is not voluntary and it is pursuant only to positive identification of inaccurate particulars in respect of bogus purchases by the AO, thereby, he confirmed the action of AO in imposing impugned penalty amount u/s. 271(1)(c) of the Act.

6. We note that under similar circumstances for A.Ys. 2006-07 and 2007-08, the imposition of penalty which was confirmed by the CIT(A) and is challenged, the ITAT deleted the penalty imposed u/s. 271(1)(c) of the Act vide its order dated 19-08-2019 in assessee's own case in ITA Nos. 432 & 433/PUN/2019. The relevant portion at Para No. 6 reproduced here-in-below for ready reference :

"6. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to levy of penalty u/s 271(1)(c) of the Act. It is an undisputed fact that in the present case during the survey, assessee had admitted to disclose additional income of Rs.19,10,720/- on account of bogus purchases. The perusal of statement recorded during the course of survey also reveals that it was stated that assessee firm had made actual purchases from the market for which it had received the bills from the parties

and had also made payments through account payee cheques but since assessee was unable to prove the genuineness of the purchases to the extent required by the Revenue, and in order to avoid litigation and buy peace of mind, the income was offered by the assessee. It is a fact that the income declared during the course of survey was included in the return of income filed by the assessee in response to notice u/s 148 of the Act. Thereafter in the assessment order passed u/s 143(3) r.w.s. 147 of the Act the AO had accepted the return of income filed by the assessee and no addition was made therein. In such a situation, we relying on the decision of Pune Bench of the Tribunal in ITA Nos.1241 to 1246/PUN/2016 (supra) and for similar reasons are of the view that there is no question of levying penalty on account of concealment on the assessee. Hence, we direct to delete the penalty levied by the AO and which was confirmed by Ld.CIT(A). Thus, the grounds of assessee are allowed.”

7. On perusal of the above, we note that the issue is based on the same identical facts relating to the issue raised in A.Y. 2008-09 and there was no contrary view produced by the ld. DR. Therefore, following the same, the penalty of Rs.16,45,000/- imposed by the AO as confirmed the CIT(A) u/s. 271(1)(c) of the Act is deleted. Thus, the grounds raised in A.Y. 2008-09 are allowed.

8. In the result, the appeal of assessee in ITA No. 826/PUN/2018 is allowed.

ITA Nos. 827 & 828/PUN/2018 (A.Ys. 2009-10 & 2010-11)

9. Both sides are unanimous in stating that the issues raised in the appeal and the facts in ITA No.826/PUN/2018 are identical to ITA Nos. 827 & 828/PUN/2018 except the variance in amount. Since, the facts in ITA Nos. 827 & 828/PUN/2018 are similar to ITA No. 826/PUN/2018, the findings given by us while deciding the appeal of assessee in ITA No.826/PUN/2018 would *mutatis mutandis* apply to ITA Nos. 827 &

828/PUN/2018, as well. Thus, both the appeals of assessee are allowed, accordingly.

10. To sum up, all the three appeals of assessee are allowed.

Order pronounced in the open court on 10th January, 2022.

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

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

पुणे / Pune; दिनांक / Dated : 10th January, 2022.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-13, Pune
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.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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