

ITA No. 1973/PUN/2017
(Assessment Year: 2007-08)

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M/s. Jain Promoters and Developers
82-A, East Street Galleria
Camp, Pune 411001

Vs.

The Income Tax Officer
Ward - 7(1)
Pune

PAN – AAEFJ4041N

Appellant**Respondent****ITA Nos. 1974 to 1976/PUN/2017**
(Assessment Years: 2005-06 to 2007-08)

M/s. Jain Ashapuri Builders and Developers
82-A, East Street Galleria
Camp, Pune 411001

Vs.

The Income Tax Officer
Ward - 7(1)
Pune

PAN – AAEFJ4041N

Appellant**Respondent**

Appellant by: Shri Naresh
Respondent by: Shri S.P. Walimbe

Date of Hearing: 27.04.2022
Date of Pronouncement: 05.05.2022

ORDER**Per S.S. Godara, JM**

The instant batch of thirteen cases pertains to six assesses. relevant details of these cases read as under: -

Sr.No	AY	ITA No	Appellant	Order appealed against	Proceeding under Section
1	2006-07	1098/Pun/2017	Vastu Estate	CIT(A)-5, Pune order dated 21.12.2016 Case No. PN/CIT(A)-5/ITO.Wd-7(1), Pune/7/2016-17	271(1)(c)
2	2005-06	1099/Pun/2017	Jain Ashapuri Estate	CIT(A)-5, Pune order dated 09.12.2016 Case No. PN/CIT(A)-5/ITO.Wd-7(1), Pune/11/2016-17	”
	2006-07	1100/Pun/2017		Case No. PN/CIT(A)-5/ITO.Wd-7(1), Pune/12/2016-17 Dated 12.05.2017	
	2007-08	1969/Pun/2017		Case No. PN/CIT(A)-5/ITO.Wd-7(1), Pune/13/2016-17	

3	2006-07 2007-08	1964/Pun/2017 1965/Pun/2017	Jain Ashapuri Shinde Associates	CIT(A)-5, Pune order dated 11.05.2017 Case No. PN/CIT(A)-5/ITO.Wd-7(1), Pune/20/2016-17 Case No. PN/CIT(A)-5/ITO.Wd- 7(1), Pune/21/2016-17	“
4	2005-06 2996-07 2007-08	1970/Pun/2017 1971/Pun/2017 1972/Pun/2017	Jain Ashapuri Promoters and Builders	CIT(A)-5, Pune order dated 11.05.2017 Case No. PN/CIT(A)-5/ITO.Wd-7(1), Pune/17/2016-17 Case No. PN/CIT(A)-5/ITO.Wd- 7(1), Pune/17/2016-17 Case No. PN/CIT(A)-5/ITO.Wd- 7(1), Pune/17/2016-17	“
5	2006-07	1973/Pun/2017	Jain Promoters and Builders	CIT(A)-5, Pune order dated 12.05.2017 Case No. PN/CIT(A)-5/ITO.Wd-7(1), Pune/10/2016-17	“
6	2005-06 2006-07 2007-08	1974/Pun/2017 1975/Pun/2017 1976/Pun/2017	Jain Ashapuri Builders and Promoters	CIT(A)-5, Pune order dated 12.05.2017 Case No. PN/CIT(A)-5/ITO.Wd-7(1), Pune/14/2016-17 Case No. PN/CIT(A)-5/ITO.Wd- 7(1), Pune/15/2016-17 Case No. PN/CIT(A)-5/ITO.Wd- 7(1), Pune/16/2016-17	“

Heard both the sides and case files perused.

2. We notice at the outset that the assessee's identical sole substantive grievance raised in these respective appeals challenges correctness of both the lower authorities' action levying Section 271(1)(c) penalty(ies) involving varying sums. We find from the "lead" appeal ITA No. 1098/Pun/2017 that the impugned penal action has arisen on account of various quantitative additions under Sections 40(a)(ia) and 40A(3) as well as those made under Sections 68, 69G, lower withdrawals, TDRS brokerage and interest expenses, etc. And that the department had made the impugned disallowances/additions as per the common search action herein dated 10.08.2006 in all these cases.

3. It next emerges that this tribunal's common quantum order dated 30th November, 2017 in all these assessee's appeals has already deleted majority of the disallowances/additions, ie partners' capital contribution, Section 40(a)(ia), Section 40(3) etc. Learned coordinate bench has further directed the Assessing Officer to verify the specified amounts of unexplained income addition afresh. And it has further ordered afresh recomputation of entire income. The impugned penalty(ies) have hardly any legs to stand therefore. Coupled with this, we find that the assessee's have also filed its petition dated

31st January, 2022 that even the penalty proceedings herein also deserve to be quashed once the Assessing Officer's corresponding show cause notice; all of them issued in identical terms dated 31st December, 2010 in the foregoing lead case, nowhere specify the corresponding limb as to whether these taxpayers had concealed particulars of income or furnished inaccurate particulars of income or both; respectively.

4. Mr. Walimbe vehemently argued that the assessee(s) are estopped from raising the instant legal ground at this belated stage. We find no merit in the Revenue's instant technical objection in the case in light of NTPC vs. CIT (1998) 229 ITR 383 (SC) as considered in All Cargo Global Logistics vs. DCIT (2012) 137 ITD 287 (Mum) (SB), holds that the instant case very well entertain a pure legal question at any stage provided all facts are part of record. Coming to the Assessing Officer's penalty show cause notice, there is hardly any dispute that he has not even specified any particular expression as to in what manner these assessee's deserve to be penalised under Section 271(1)(c) of the Act which goes against the tenor of the hon'ble jurisdictional high court's recent Full Bench decision in Mohammed Farhan A. Shaik A Shah vs. ACIT (2021) 434 ITR 1 (Bom) taking into consideration all judicial pronouncements till date. Apart from the foregoing merits of the disallowances/additions wherein majority of them stand deleted in light of the quantum proceedings, we hold that the impugned penal proceedings are also liable to be quashed on this legal aspect. The same are accordingly annulled for this precise reason. All these assessee's succeed in their corresponding legal ground(s) as well.

These six assessee's thirteen appeals are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 5th May, 2022.

Sd/-
(Dipak P. Ripote)
Accountant Member

Sd/-
(S.S. Godara)
Judicial Member

Pune, Dated: 5th May, 2022

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -5, Pune*
4. *The Pr.CIT - 4, Pune*
5. *The DR, "A" Bench, ITAT, Pune*

By Order

//True Copy//

*Assistant Registrar
ITAT, Pune Benches, Pune*

n.p.

