

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

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.561/PUN/2020
निर्धारणवर्ष / Assessment Year : 2011-12

Kuruvila Alexander, Gate No.2139/4, Nanekarwadi, Opp. Vijay Oil Mills, Chaka, Pune – 410501. PAN: AANPA 4943 K	Vs .	The Income Tax Officer, Ward-8(1), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri M K Kulkarni – AR
Revenue by	Shri Arvind Desai – DR
Date of hearing	23/06/2022
Date of pronouncement	30/06/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax(Appeals)-6, Pune for the A.Y.2011-12 dated 28.08.2020. The Assessee has raised the following grounds of appeal:

“1.On the facts and in the circumstances of the case and in law the penalty levied by A.O. under S.271(l)(c) for furnishing of inaccurate particulars of income and without proper initiation of such proceedings and the Ld. CIT(A) confirming the penalty levied without application of mind and appreciation of legal position placed before her, the penalty levied is not sustainable in law. It be quashed.

2. *On the facts and in the circumstances of the case and in law though without appreciating the legal position surrendered such bogus purchases for taxation the law with the help of judicial precedents says and clarifies differently. It is settled law that assessment and penalty proceeding having different connotations the penalty cannot be levied and sustained merely on the basis of additions made to income. When all the information material is placed on record but the issue is not allowed by the authorities below it cannot be called "inaccurate particulars of income" per jurisdictional Bombay High court Judgment. The penalty u/s 271(l)(c) is not sustainable. It be quashed.*
 3. *On the facts and in the circumstances of the case and in law it is trite law that the penalty u/s 271(l)(c) cannot be levied unless such proceedings attain finality. The MA filed by the assessee under S. 254(2) is yet to be heard in which primarily jurisdictional issue has been raised. It be held accordingly."*
2. Brief facts of the case are that the assessee is engaged in the business of manufacturing of various types of Precision Tools etc., The Assessing Officer(AO) received information the Sales Tax Department that the assessee has indulged in bogus purchases to the tune of Rs.1,21,501/- from the two parties i.e. Balaji Impex and Nidhi Sales Corporation. A notice under section 148 of the Act was issued on the assessee after recording satisfaction. Thereafter, another notice under section 142(1) of the Act was also served on the assessee. In response, the assessee submitted that the original return may be treated as Return in response to notice under section 148 of the Act. In the course of proceedings before the AO, the assessee

agreed to the disallowance proposed by the AO in order to buy peace of mind. Ergo, the AO made addition of the said sum and levied penalty under section 271(1)(c) of the Act amounting to Rs.37,544/- for filing inaccurate particulars of income. The AO further made additions of Rs.1,48,387/- on account of loss on sale of car and Rs.10,000/- on account of debiting of donation. Eventually, the AO determined the total income at Rs.14,73,585/-.

3. Aggrieved by the order of the AO, the assessee filed appeal before the Id.CIT(A) contesting the penalty appeal i.e. order under section 271(1)(c) of the Act and relied on the order of ITAT Pune Bench in ITA No.795/PUN/2014 order dated 28.04.2017. It is seen that the Id.CIT(A) passed the order ex-parte confirming the quantum addition as well as penalty levied under section 271(1)(c) of the Act, in view of the confession made by the assessee before the AO.

4. Before us, the Id.AR for the assessee submitted that the assessee could not represent his case before the Id.CIT(A) and urged the Bench to grant one more opportunity in the interest of principles of natural justice. He also filed an additional ground relying on the judgment of the Hon'ble Bombay High Court in Pr.CIT vs. Mohammed Haji Adam & Co.,

5. We have heard both the parties and perused the material available on record. It is an admitted position that the Id.CIT(A) passed an ex-parte order qua the assessee affirming the penalty levied by the AO. Considering the facts and circumstances in the extant case, and allowing the additional ground raised by the Id.AR being purely legal in nature, we deem it appropriate to remit the matter to the file of Id.CIT(A) affording reasonable opportunity of hearing to the assessee. We also direct the assessee to file necessary documentary evidences as considered expedient. Accordingly, grounds raised by the assessee are allowed for statistical purpose.

6. In the result, appeal of the Assessee is Allowed for Statistical Purpose.

Order pronounced in the open Court on 30th June, 2022.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 30th June, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.