

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE

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

ITA No.705/PUN/2018

निर्धारण वर्ष / Assessment Year : 2005-06

Shri Ashok M. Musale C/o M/s. Pune Metagraph, G-113, MIDC, Bhosari, Pune – 411026 PAN : AAUPM2922P	Vs.	DCIT, Circle 8, Pune
Appellant		Respondent

Assessee by None  
Revenue by Shri S.P. Walimbe  
Date of hearing 27-06-2022  
Date of pronouncement 30-06-2022

आदेश / ORDER

PER S.S. GODARA, JM :

This assessee's appeal for AY 2005-06 arises against the CIT(A)-6, Pune's order dated 15-02-2018 passed in case No. PN/CIT(A)-V/DCIT, Cir.8/192/2015-16 involving proceedings under Section 271(1)(c) of the Income Tax Act, 1961, in short 'the Act'.

Case called twice. None appears at the assessee's behest. He is accordingly proceeded *ex-parte*.

2. Coming to the assessee's sole substantive grievance that both the learned lower authorities have erred in law and on facts in levying impugned section 271(1)(c) penalty amounting to Rs.22,13,376/- pertaining to deemed dividend addition made in quantum proceedings, Mr. Walimbe vehemently

supported the same by pleading that this taxpayer had failed to offer any justifiable explanation. He also quoted case law Mak Data Pvt. Ltd. vs. CIT (2013) 358 ITR 593 (SC) that such a penalty is indeed attracted on account of assessee's failure in filing a cogent explanation.

3. We have given our thoughtful consideration to the foregoing arguments and find no merit therein. A perusal of Assessing Officer's corresponding penalty show cause notice dated 28.09.2012 suggests that he had nowhere specified as to whether this taxpayer had concealed particulars of his income or furnished inaccurate particulars of such income. That being the case, we quote the hon'ble jurisdictional high court's recent landmark decision in Mohd. Farhan A. Shaikh vs. ACIT (2021) 434 ITR 1 (Bom) (FB) holding that such a failure on Assessing Officer's part is indeed fatal to initiation of 271(1)(c) penal provision itself. We accordingly delete the impugned penalty for this precise reason alone.

All other grounds on merits stand rendered academic.

4. This assessee's appeal is allowed in above terms.

Order pronounced in the Open Court on 30<sup>th</sup> June, 2022.

Sd/-  
**(DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**  
पुणे Pune; दिनांक Dated : 30 June, 2022  
GCVSR

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

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-6, Pune
4. The Pr.CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" /  
DR 'A', ITAT, Pune
6. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	27-06-2022	Sr.PS
2.	Draft placed before author	28-06-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		