

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

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
 AND  
 SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.1448/PUN/2019  
निर्धारण वर्ष / Assessment Year : 2011-12**

Deputy Commissioner of Income Tax,  
 Circle – 14, Pune

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Shri Sunil Shivajirao Bhosale,  
 94-A, Sangita-Smriti,  
 Shivajinagar, Pune – 411005

PAN : ACMPB9480D

.....प्रत्यर्थी / Respondent

**प्रत्याक्षेप सं. / CO No.13/PUN/2022  
निर्धारण वर्ष / Assessment Year : 2011-12**

Shri Sunil Shivajirao Bhosale,  
 94-A, Sangita-Smriti,  
 Shivajinagar, Pune – 411005

PAN : ACMPB9480D

.....अपीलार्थी /  
 Appellant

**बनाम / V/s.**

Deputy Commissioner of Income Tax,  
 Circle – 14, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.N. Puranik  
 Revenue by : Shri M.G. Jasanani

सुनवाई की तारीख / Date of Hearing : 30-06-2022  
 घोषणा की तारीख / Date of Pronouncement : 04-07-2022

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

The above said appeal and cross objection by the Revenue and assessee, respectively filed against the common order dated 12-07-2019 passed by the Commissioner of Income Tax (Appeals)-3, Pune [‘CIT(A)’] for assessment year 2011-12.

2. Since, the issues raised in appeal and cross objection are similar based on same identical facts. Therefore, upon hearing and with the consent of both the parties, we proceed to dispose off above said appeal and cross objection together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up the appeal by the Revenue in ITA No. 1448/PUN/2019 for the A.Y. 2011-12.

4. The Revenue raised four grounds of appeal amongst with the only issue emanates for our consideration is as to whether the CIT(A) is justified in cancelling the penalty imposed by the AO u/s. 271(1)(c) of the Act.

5. Heard both the parties and perused the material available on record. We note that the AO recorded its satisfaction by observing that the assessee concealed income vide Para No. 5.2.9 at Page No. 11 of the assessment order dated 18-03-2014 passed u/s. 143(3) r.w.s. 147 of the Act. In pursuance of the said satisfaction, the AO issued notice dated 18-03-2014 u/s. 274 r.w.s. 271(1)(c) of the Act for both the charges i.e.

concealment of income and furnishing inaccurate particulars of income. The contention of the ld. AR is that the AO did not strike out the relevant charge in the said notice. Further, we note that the AO levied penalty for furnishing inaccurate particulars of income vide Para No. 11 of the penalty order dated 29-03-2017 passed u/s. 271(1)(c) of the Act.

6. Having aggrieved, the assessee preferred an appeal before the CIT(A) challenging the action of AO for not striking out of the relevant charge in show cause notice issued u/s. 274 r.w.s. 271(1)(c) of the Act and also the penalty imposed under the charge of furnishing inaccurate particulars of income is contrary to the satisfaction recorded by the AO in the assessment order i.e. concealment of income. We note that the CIT(A) discussed the issue in detail and by placing reliance on the batch of orders of this Tribunal particularly in the case of Ambadas K Lavhale in ITA No. 1292/PUN/2016 vide order dated 14-08-2018 which held that the AO is under obligation to satisfy the correct limb at the time of initiation as well as at the time of levy of penalty and in the absence of which penalty order is unsustainable in law. The CIT(A) following the said decision held the penalty proceedings to be invalid. The ld. DR did not file any order contrary to the view taken by the Tribunal in the cases where penalty is not justified in the absence of non-striking of relevant charge in the notice issued u/s. 274 of the Act. Therefore, we find no infirmity in the order of CIT(A) and it is justified. Thus, the grounds raised by the Revenue are dismissed.

7. In the result, the appeal of Revenue is dismissed.

**CO No. 13/PUN/2022, (A.Y. 2011-12) filed by the assessee**

8. In view of our decision in Revenue's appeal upholding the order of CIT(A), the issue raised in cross objection by the assessee becomes infructuous and are dismissed as such.

9. In the result, the appeal of Revenue as well as cross objection raised by the assessee is dismissed.

Order pronounced in the open court on 04<sup>th</sup> July, 2022.

Sd/-  
(Inturi Rama Rao)  
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 04<sup>th</sup> July, 2022.  
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-3, Pune
4. The Pr. CIT-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" 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