

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

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

आयकर अपील सं. / ITA No.1644/PUN/2018
निर्धारण वर्ष / Assessment Year : 2008-09

Shri Sujay Satish Shah,
Shah Bungalow, Shivaji Nagar Colony,
Miraj, District-Sangli – 416410

PAN : AXPP00719L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 1(1), Sangli

.....प्रत्यर्थी / Respondent

Assessee by : Shri B.C. Malakar
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 13-07-2022
घोषणा की तारीख / Date of Pronouncement : 14-07-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 28-08-2018 passed by the Commissioner of Income Tax (Appeals)-1, Kolhapur [‘CIT(A)'] for assessment year 2008-09.

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

3. The assessee also raised additional grounds of appeal challenging the validity of penalty proceedings u/s. 271(1)(c) of the Act.

4. The ld. AR submits that the AO recorded satisfaction for concealment of income in assessment order and penalty was imposed for furnishing inaccurate particulars of income. He argued that the penalty order passed by the AO u/s. 271(1)(c) of the Act is illegal and invalid under law. Further, he refers to penalty notice issued u/s. 274 r.w.s. 271(1)(c) of the Act and submits that the AO while issuing such notice did not apply his mind as much as for which charge the penalty proceedings being initiated. He relied on the decision of Hon'ble High Court of Karnataka in the case of Manjunath Cotton & Ginning Factory reported in 359 ITR 565 (Kar.) and in the case of Samson Perincherry reported in 392 ITR 3 (Bom.) of Hon'ble High Court of Bombay. The ld. DR relied on the order of CIT(A).

5. We note that the main contention of ld. AR by way of additional grounds that questioning of validity of initiation of penalty proceedings. Admittedly, the AO recorded satisfaction the assessee deemed to have concealed the particulars of income vide Para No. 7 of his order. Further, it is noted that the AO imposed penalty u/s. 271(1)(c) of the Act holding that the assessee has furnished inaccurate particulars of income vide Para No. 7 of penalty order dated 29-05-2013. The ld. AR placed on record the notice dated 27-11-2012 at Page No. 33 of the paper book. On perusal of the same, we note that the AO did not strike of the relevant charge on which is he going to proceed against the assessee for levying penalty u/s. 271(1)(c) of the Act. It is settled position that the AO while issuing statutory notice u/s. 274 of the Act must be clear on which charge is going to initiate penalty proceedings. In the present case as discussed above the

AO recorded satisfaction for concealment of income in the assessment order and imposed penalty in furnishing inaccurate particulars of income. The notice issued u/s. 274 r.w.s. 271(1)(c) of the Act is not clear on which charge is going to levy penalty u/s. 271(1)(c) of the Act. Therefore, the penalty order imposed by the AO and as confirmed by the CIT(A) fails and the order of CIT(A) is not justified and it is dismissed.

6. In view of our decision in additional grounds of appeal, the main grounds raised by the assessee becomes academic, requiring no adjudication.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 14th July, 2022.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 14th 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)-1, Kolhapur
4. The Pr. CIT-1, Kolhapur
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