

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

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

आयकर अपील सं. / ITA No.1945/PUN/2018
निर्धारण वर्ष / Assessment Year: 2009-10

Babasaheb Dongre, 102B, Bajrang Garkheda Parisar, Aurangabad- 431001. PAN : ABGPD7435B	Kondiram Colony	Vs.	ITO, Ward-1(2), Aurangabad.
Appellant			Respondent

Assessee by : None
Revenue by : Shri S. P. Walimbe

Date of hearing : 19.07.2022
Date of pronouncement : 21.07.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)-1, Aurangabad [‘the CIT(A)’] dated 17.08.2018 for the assessment year 2009-10 confirming the levy of penalty u/s 271(1)(c) of the Income Tax Act, 1961 (‘the Act’).

2. Briefly, the facts of the case are that the appellant is an individual and no regular return of income was filed. Subsequently,

on receipt of information that the appellant made cash deposits of Rs.14,16,500/- in savings bank accounts during the financial year 2008-09 relevant to the assessment year 2009-10, the Assessing Officer formed an opinion that the income had escaped assessment to tax and, accordingly, issued notice u/s 148 of the Act. In response to the notice u/s 148, the return of income was filed on 18.07.2016 declaring total income of Rs.1,43,430/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-1(2), Aurangabad ('the Assessing Officer') vide order dated 25.11.2016 passed u/s 143(3) r.w.s. 147 of the Act at total income of Rs.4,85,930/-. While doing so, the Assessing Officer made addition of Rs.3,42,500/- being the unexplained cash deposits in the bank accounts on the ground that the appellant had failed to explain the source for cash deposits made in the bank accounts. The Assessing Officer also initiated penalty proceedings for both the limbs i.e. concealment of particulars of income as well as furnishing of inaccurate particulars of income u/s 271(1)(c) of the Act. In response to the show-cause notice, the appellant filed explanation stating that the cash deposits were made, out from the proceeds of agricultural produce etc and assessee is neither guilty of

concealment of particulars of income nor furnishing inaccurate particulars of income. The Assessing Officer had rejected the said explanation of the assessee and proceeded with levy of penalty of Rs.64,662/- u/s 271(1)(c) of the Act by holding that the appellant is guilty of concealment of particulars of income. Even on appeal before the ld. CIT(A), the ld. CIT(A) confirmed the levy of penalty u/s 271(1)(c) of the Act.

3. Being aggrieved, the appellant is in appeal before us in the present appeal.

4. When the appeal was called on, none appeared on behalf of the appellant-assessee despite due service of notice of hearing. Therefore, we proceed to dispose of this appeal after hearing the ld. Sr. DR.

5. We heard the ld. Sr. DR and perused the material on record. The issue in the present appeal relates to the levy of penalty of Rs.64,662/- u/s 271(1)(c) made on the addition of Rs.3,42,500/- on account of unexplained cash deposits in savings bank account of the appellant. On perusal of the assessment order, it would reveal that the Assessing Officer had initiated penalty proceedings for both the limbs i.e. concealment of particulars of income as well as furnishing

of inaccurate particulars of income, however, the penalty was levied only holding that the assessee is guilty of concealing of particulars of income. It is settled position of law that the Assessing Officer cannot levy penalty on the charges different from the charges for which the penalty proceedings were initiated. Accordingly, we direct the Assessing Officer to delete the penalty of Rs.64,662/- u/s 271(1)(c) of the Act. Thus, this issue raised by the assessee stands allowed.

6. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 21st day of July, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 21st July, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)- 1, Aurangabad.
4. The Pr. CIT-1, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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