



आयकर अपीलीय न्यायाधिकरण, पुणे न्यायपीठ, "सी" बेंच पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE "C" BENCH, PUNE
BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER
आयकर अपील सं. / ITA No. 2295 & 2296/PUN/2017
करनिर्धारण वर्ष/ Assessment Year : 2009-10 & 2010-11

Dy. Commissioner of Income Tax,
Circle-1(2), Pune.

..... अपीलार्थी / Appellant

बनाम / V/s.

Fiat India Automobiles Limited,
B-19A, Ranjangaon MIDC, Shirur, Pune.
PAN : AAACF1716D

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Shri Percy Pardiwalla

Revenue by : Shri Prashant Gadekar

सुनवाई की तारीख / Date of conclusive Hearing : 26/08/2022

घोषणा की तारीख / Date of Pronouncement : 26/08/2022

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

Present appeals of the Revenue are assailed against separate orders of Commissioner of Income Tax (Appeals)-13, Pune [for short "**CIT(A)**"] dt. 27/07/2016 passed u/s 250 of the Income-tax Act, 1961 [for short "**the Act**"] which sprung out of orders of penalty [for short "**PO**"] of Dy. Commissioner of Income Tax Circle-1(2), Pune [for short "**AO**"] dt. 29/03/2017 passed u/s 271(1)(c) of the Act for assessment year [for short "**AY**"] 2009-10 & 2010-11.

2. Since the legal issue involved in both these appeals is identical, with the agreement of both the parties; pending the quantum appeals before this bench, the matter is heard together for a consolidated order, resultantly the adjudication in lead case ITA/2295/PUN/2017 positioned in succeeding paragraphs, shall ***mutatis mutandis*** apply to ITA/2296/PUN/2017.

3. Before riding the cycle for adjudication, it is essential to reproduce the **grounds challenged** by appellant, as;

“1. The order of the Ld. Commissioner of Income Tax (Appeals) is contrary to law and to the facts and circumstance of the case.

2. The Ld. Commissioner of Income Tax (Appeals) erred in deleting the penalty whereas the AO has rightly levied the penalty u/s 271(1)(c) after satisfying himself that the assessee failed to prove that the prices charged or paid in International Taxation was computed in good faith and with due diligence.

3. The Ld. Commissioner of Income Tax (Appeals) grossly erred in allowing the appeal in favour of the assessee whereas the AO has proved that the act done by the assessee by way of furnishing inaccurate particulars of income is not in good faith and with due diligence.

4. The decision of Ld. CIT(A) is contrary to the provisions of the Explanation-7 to section 271(1)(c) of the Act, 1961 wherein it is stated that the onus is on the assessee to prove that the computation is made under the provisions contained in section 92C was in good faith and with due diligence.



5. For these and such other ground as may be urged at the time of hearing, the order of the Ld. Commissioner of Income Tax (Appeals) may be vacated and that of the assessing office be restored.

6. The appellant craves to add, amend, alter or delete any of the ground of appeal during the course of appellate proceedings before the Hon'ble Tribunal.”

4. Without touching to the facts and merits of the case, during the course of physical hearing, the learned senior counsel for the assessee [for short **“AR”**], at the outset, in support of legal ground raised by appellant submitted that, the **initiation as well imposition of penalty suffers from voice of non-application of mind** of the Ld. AO and therefore the penalty deserves to be deleted ***in limine***. The learned departmental representative [for short **“DR”**] candidly solidified the deficiency in the impugned notice.

5. After hearing to the rival contentions of both the parties; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short **“ITAT, Rules”**] perused the copy of show notice served u/s 274 r.w.s. 271(1)(c) in the light of settled legal position and the case laws relied upon by the appellant and respondent.



6. In the light of judgement rendered by Hon'ble Supreme Court in **"Dilip N Shroff Vs JCIT"** reported at 291 ITR 519 (SC), and of Hon'ble Jurisdictional High Court of Bombay, in plethora of cases inter-alia **"CIT Vs Samson Pericherry"** reported in 392 ITR 4, and recently in **"Mohd. Farhan A. Shaikh Vs DCIT"** reported at 434 ITR 1, we are of the considered view that, the show cause notice served u/s 274 r.w.s. 271(1)(c) without specifying any limb or charge, is invalid and untenable in the eyes of law, consequently the penalty imposed u/s 271(1)(c) of the Act being bad in law and quashed accordingly.

7. Resultantly, both the appeals of the appellant revenue are dismissed accordingly.

In terms of rule 34 of ITAT Rules, 1963 both the orders are pronounced in the open court on this Friday 26th day of August, 2022.

- S/d -

S. S. GODARA
JUDICIAL MEMBER

पुणे / PUNE; दिनांक / Dated: 29th day of August, 2022.

- S/d -

G. D. PADMAHSHALI
ACCOUNTANT MEMBER



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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Pune (Mh-India)
4. The CIT(A)-13, Pune (Mh-India)
5. विभागीय प्रतिनिधि, आयकर अपीलीय न्यायाधिकरण, पुणे "सी" बेंच, पुणे / DR, ITAT, Pune "C" Bench, Pune.
6. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.