

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

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

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1	578/PUN/2020	DCIT, Circle-8, Pune.	M/s. Shree Electricals, A-132, H Block, MIDC Bhosari, Pune- 411018. PAN : AAFFS8047J	2013-14
2	579/PUN/2020	DCIT, Circle-8, Pune.	M/s. Shree Stampings, J-158, MIDC Bhosari, Pune- 411026. PAN : AAFFS8046K	2013-14

Revenue by : Shri M. J. Jasnani
Revenue by : Shri Sharad Vaze

Date of hearing : 29.08.2022
Date of pronouncement : 30.08.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the appeals filed by the Revenue directed against the different orders of Id. Commissioner of Income Tax (Appeals)-6, Pune dated 09.01.2020 for the assessment year 2013-14 respectively.

2. Since the identical facts and common issues are involved in both the above appeals, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.578/PUN/2020 for the assessment year 2013-14 are stated herein.

ITA No.578/PUN/2020 :

4. Briefly, the facts of the case are that the respondent-assessee is a firm engaged in the business of manufacturing and selling of switchgear parts, and trading in cutting tools, Insert and shank/tool holder. The return of income for the assessment year 2013-14 was filed on 29.09.2013 disclosing total income of Rs.5,18,58,321/-. The returned income includes income of Rs.1,65,00,000/- declared during the course of survey operations conducted u/s 133A of the Income Tax Act, 1961 ('the Act') in the business premises of the respondent-assessee on 28.08.2012 on account of excess stock found, but not accounted in the books of account. Against the said return of income, the assessment was completed by the Dy. Commissioner of Income Tax, Circle-8, Pune ('the Assessing Officer') vide order dated 04.03.2016 passed u/s 143(3) accepting the returned income.

Subsequently, the Assessing Officer also initiated penalty proceedings on the ground that the assessee would not have

declared the additional income shown in the return of income, but for the survey operations and levied a penalty of Rs.51,10,430/- vide order dated 27.09.2016 passed u/s 271(1)(c) of the Act.

5. Being aggrieved by the order of levy of penalty, an appeal was preferred before the Id. CIT(A), who vide impugned order quashed the penalty on the ground that the Assessing Officer had not struck off the relevant column of the show-cause notice, following the decision of Pune Bench of the Tribunal in the case of Shaila P. Choudhary in ITA Nos.2857 & 2858/PUN/2016 order dated 02.01.2019.

6. Being aggrieved by the decision of the Id. CIT(A), the Revenue is in appeal before us challenging the correctness of the decision of the Id. CIT(A).

7. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the levy of penalty u/s 271(1)(c) of the Act. We find from the material on record that there is no variation between the returned income and assessed income, the question of levy of penalty u/s 271(1)(c) does not arise in view of the settled position of law that the penalty is levied with reference to the return of income. Since there is no change between the returned income and assessed income, the question of levy of

penalty does not arise. In this regard, reliance can be placed on the decision of the Hon'ble Delhi High Court in the case of CIT vs. SAS Pharmaceuticals 335 ITR 259 (Delhi). The Hon'ble Delhi High Court in the case of SAS Pharmaceuticals (supra) involving the identical facts held that no penalty could be imposed as there was no concealment or furnishing inaccurate particulars of income as the assessee had made a complete disclosure in the return of income and offered the additional amount for the purpose of tax. The relevant paragraph of the said judgment of the Hon'ble Delhi High Court (supra) are as under :-

“15. It necessarily follows that concealment of particulars of income or furnishing of inaccurate particular of income by the assessee has to be in the income-tax return filed by it. There is sufficient indication of this in the judgment of this Court in the case of CIT v. Mohan Das Hassa Nand [1983] 141 ITR 203 / 13 Taxman 328 and in Reliance Petroproducts (P.) Ltd. (supra), the Supreme Court has clinched this aspect, viz., the assessee can furnish the particulars of income in his return and everything would depend upon the income-tax return filed by the assessee. This view gets supported by Explanation 4 as well as Explanations 5 and 5A to section 271 of the Act as contended by the learned counsel for the respondent.

16. No doubt, the discrepancies were found during the survey. This has yielded income from the assessee in the form of amount surrendered by the assessee. Presently, we are not concerned with the assessment of income, but the moot question is to whether this would attract penalty upon the assessee under the provisions of section 271(1)(c) of the Act. Obviously, no penalty can be imposed unless the conditions stipulated in the said provisions are duly and unambiguously satisfied. Since the assessee was exposed during survey, may be, it would have not disclosed the income but for the said survey. However, there cannot be any penalty only on surmises, conjectures and possibilities. Section 271(1)(c) of the Act has to be construed strictly. Unless it is found that there is actually a concealment or non-

disclosure of the particulars of income, penalty cannot be imposed. There is no such concealment or non-disclosure as the assessee had made a complete disclosure in the income-tax return and offered the surrendered amount for the purposes of tax.”

8. The ratio of the Hon'ble Delhi High Court (supra) is squarely applicable to the facts of the present case. Therefore, in view of the well settled position of law, we are of the considered opinion that it is not a fit case for levy of penalty u/s 271(1)(c) of the Act. Hence, we do not find any reason to interfere with the order of the Id. CIT(A). Thus, grounds of appeal filed by the Revenue stands dismissed.

9. In the result, the appeal filed by the Revenue in ITA No.578/PUN/2020 for A.Y. 2013-14 stands dismissed.

ITA No.579/PUN/2020 :

10. Since the facts and issues involved in both the above appeals of the Revenue are identical, therefore, our decision in ITA No.578/PUN/2020 for A.Y. 2013-14 shall apply *mutatis mutandis* to the appeal of the Revenue in ITA No.579/PUN/2020 for A.Y. 2013-14. Accordingly, the appeal of the Revenue in ITA No.579/PUN/2020 for A.Y. 2013-14 stands dismissed.

11. To sum up, both the above appeals filed by the Revenue stands dismissed.

Order pronounced on this 30th day of August, 2022.

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

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 30th August, 2022.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order 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, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल/ Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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