



॥ आयकर अपीलीय न्यायाधिकरण, पुणे "बी" न्यायपीठ, पुणे में ॥
IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE "B" BENCH, PUNE
BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1409/PUN/2019

निर्धारण वर्ष / Assessment Year : 2009-10

Pandit Gangadhar Kawale
A/P Shelgaon, Umari,
Nanded - 431807 Maharashtra
PAN:AVLPK1461F

..... अपीलार्थी / Appellant

बनाम / V/s.

Income Tax Officer,
Ward 3, Nanded

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Shri Pratikh Sandhbhor

Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of conclusive Hearing: 30/09/2022

घोषणा की तारीख / Date of Pronouncement : 07/10/2022

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

This appeal challenges the order of Commissioner of Income Tax (Appeals)-1, Aurangabad [for short "**CIT(A)**"] dt. 27/03/2019 passed u/s 250 of the Income-tax Act, 1961 [for short "**the Act**"], which emanated out of order of penalty [for short "**PO**"] dt. 24/03/2017 passed by the Income Tax Officer, Ward-3, Nanded [for short "**AO**"] u/s 271(1)(c) of the Act.



2. The grounds of appeal raised in the appeal memo are;

1. *On the facts and in the circumstances of the case the Assessing Officer has erred in levying penalty u/s 271(1)(c)*
2. *On the facts and in the circumstances of the case the Penalty Order passed u/s 271(1)(c) is bad in law in as much as the penalty proceedings have been initiated without specifying the any limb whereas penalty has been levied invoking both the limbs u/s 271(1)(c), suggesting very clearly that there exists vagueness, ambiguity and non application of mind.*
3. *On the facts and in the circumstances of the case the penalty order passed u/s 271(1)(c) is unsustainable and illegal as the notice issued u/s 274 r.w.s. 271(1)(c) is defective in as much as it did not strike of irrelevant limbs conveying specific charge.*

The above grounds of appeal may kindly be allowed to be altered, amended, modified, deleted etc. in the interest of natural justice.

3. The controversy under the present appeal lies in a narrow compass as to survival of an order of penalty passed u/s 271(1)(c) of the Act on the premise of defective and undetermined allegation .

2. Without touching to the facts and merits of the case, during the course of physical hearing, the learned 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 congealed the deficiency in the impugned notice.

3. After hearing to 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 SCN issued u/s 274 r.w.s. 271(1)(c), case laws relied upon by the appellant as well the respondent and duly considered the facts of the case in the light of settled legal position forewarned to either parties.

4. 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



on the considered view that, since the provision of section 271(1)(c) is calamitous, albeit commercial, consequences, and mandatory, hence brooks no trifling or dilution therewith, as a result in the instant case the SCN dt 22/03/2013 issued u/s 274 r.w.s. 271(1)(c) of the Act without specifying any limb or charge, is invalid and untenable in the eyes of law, consequently we set aside the first appellate order and quashed the order of penalty passed u/s 271(1)(c) of the Act, being bad in law.

5. Resultantly, the appeal of the appellant assessee is allowed in terms of aforestated observation.

In terms of rule 34 of ITAT Rules, 1963 the order is pronounced in the open court on this Friday 07th day of October, 2022.

-S/d-

S.S. GODARA

JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI

ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 07th day of October, 2022.

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

- 1.अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Aurangabad (M.H.-India)
4. The CIT(A)-1, Aurangabad (M.H.-India)
5. DR, ITAT, Pune Bench 'B', Pune
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY RDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.