



॥ 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.08/PUN/2019

निर्धारण वर्ष / Assessment Year : 2013-14

Shinde Somnath Appasaheb

Shinde Vasti, Shirdi, Tal Rahata,

Dist Ahmednagar – 423109

PAN : EMEPS4342M

..... अपीलार्थी / **Appellant**

बनाम / V/s.

Income Tax Officer,

Ward 2, Ahmednagar

..... प्रत्यर्थी / **Respondent**

द्वारा / Appearances

Assessee by : None

Revenue by : Shri M. G. Jasnani

सुनवाई की तारीख / Date of conclusive Hearing : 27/09/2022

घोषणा की तारीख / Date of Pronouncement : 27/09/2022

आदेश / ORDER

PER G.D. PADMAHSHALI, AM;

The present appeal of the assessee for the assessment year [for short “**AY**”] 2013-14 is assailed against the first appellate order of Commissioner of Income Tax (Appeals)-2, Pune [for short “**CIT(A)**”] dt. 25/09/2018 passed u/s 250 of the Income-tax Act,1961 [for short “**the Act**”] which emanated out of penalty order [for short “**PO**”] of Income Tax Officer, Ward-2, Ahmednagar [for short “**AO**”] u/s 271(1)(c) of the Act dt.16/06/2017.

2. In advancing the matter for adjudication, it is essential to reproduce **grounds challenged** by the appellant as under;

“1. The Learned Commissioner of Income Tax (Appeal) [Ld. CIT(A)] erred under circumstances and facts of the case and in law by confirming that appellant has concealed / filed inaccurate particulars of income whereby the appellant is liable for levy of Penalty u/s 271(1)(c) of the Income Tax Act, 1961 of Rs.2,43,100.

2. The Learned CIT(A) was failed to appreciate the explanation and the facts put forth by the Appellant with regard to the error. The Appellant had also explained that said amount of Rs.10,000/- is part and parcel of Sale consideration of Rs.51,00,000/- of agricultural land sold by his father and no additional amount was received by appellant as consenter. Hence considering the contention of the Appellant the penalty confirmed by the Learned CIT(A) be deleted.”

3. The sole issue of survival of penalty levied u/s 271(1)(c) on the premise of erratic and undetermined allegation sought to be adjudicated by the present appeal.

4. When the case was called up for physical hearing, none represented the assessee, bearing in mind contents of appeal, in the interest of justice we proceeded u/r 24 of the Income Tax Appellate Tribunal Rules, 1963 [for short **“ITAT, Rules”**], to adjudicate the matters **ex-parte** on



merits, which empowers this Tribunal to decide the appeal filed by the appellant **ex-parte** on merits where the appellant does not appear in person or through an authorised representative and the same is done placing on record a no-objection from the learned departmental representative [for short "**DR**"] who without going into facts and grounds of appeal raised by the appellant, candidly sought our attention to the show cause notice [for short "**SCN**"] and we find that, the **initiation as well imposition of penalty suffers from voice of non-application of mind** of the Ld. AO deserving deletion of penalty **in limine**. The Ld. DR candidly congealed the deficiency in the impugned notice as regard to absence of specific charge alleged by the SCN.

5. After hearing to rival contentions of both the parties; and subject to the provisions of rule 18 **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.



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 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. 13/12/2016 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.

7. **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 Tuesday 27th day of September, 2022.

-S/d-

S.S. GODARA
JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 31st day of October, 2022.



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

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

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