



॥ आयकर अपीलीय न्यायाधिकरण, पुणे “ए” न्यायपीठ, पुणे में ॥  
IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE“A” BENCH,  
PUNE

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER  
AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.591/PUN/2021

निर्धारण वर्ष / Assessment Year : 2015-16

Sheetal Wireless Technologies Pvt. Ltd.,  
Flat No.17, 2<sup>nd</sup> floor, Sheshadri Society,  
Rambaug Colony, Paud Road,  
Pune – 411 038

PAN : AAHCS4069D

..... अपीलार्थी / *Appellant*

बनाम / V/s.

DCIT, Circle-6, Pune

..... प्रत्यर्थी / *Respondent*

**द्वारा / Appearances**

Assessee by : Shri Kishor B Phadke

Revenue by : Shri Ramnath P Murkude

सुनवाई की तारीख / Date of conclusive Hearing : 01/12/2022

घोषणा की तारीख / Date of Pronouncement : 01/12/2022

**आदेश / ORDER**

**PER G.D. PADMAHSHALI, AM;**

The present appeal of the assessee for the assessment year [for short “AY”] 2015-16 is assailed against the first appellate order of National Faceless Appeal Centre, Delhi [for short “CIT(A) /NFAC”] dt. 08/09/2021 passed u/s 250 of the Income-tax Act, 1961 [for short “the Act”] which emanated out of penalty order [for short “PO”] of Dy. Commissioner of Income, Circle-6, Pune u/s 271(1)(c) of the Act dt.28/06/2018 [for short “AO”] u/s.143(3) of the Act dt. 08.12.2017.



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

***“1. The learned CIT(A), NFAC, erred in law and on facts in confirming the penalty of Rs. 16,47,166/- levied u/s 271(l)(c) of the IT Act, 1961.***

***2. The learned CIT(A), NFAC, erred in law and on facts in confirming the levy of penalty for alleged furnishing inaccurate particulars of income. The learned CIT(A) ought to have appreciated that the appellant had not furnished any inaccurate particulars of income.***

***3. The learned CIT(A), NFAC, erred in law and on facts in confirming the penalty levied by the AO for alleged furnishing inaccurate particulars of income, by relying on Explanation-1 of section 271(1)(c) of the IT Act, 1961. The learned CIT(A) ought to have appreciated that Explanation-1 is not applicable in case of "furnishing inaccurate particulars of income" and that the penalty is levied in a mechanical manner.***

***4. The learned CIT(A), NFAC, erred in law and on facts in confirming the penalty levied for addition on account of disallowance of provision for warranty. The learned CIT(A) failed to appreciate that the said provisions were written back in future years and offered to tax.***

***5. The learned CIT(A), NFAC, erred in law and on facts in confirming the penalty levied for addition on account of valuation of closing stock. The learned CIT(A) ought to have appreciated that the addition was uncalled for in first place and further, closing stock is carried forward to next year as opening stock, and hence, there is no tax arbitrage.”***



3. The sole issue under adjudication relates to 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. After hearing to rival contentions of both the parties; and subject to the provisions of rule 18 of the 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.
  
5. 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. 08/12/2017 was 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.



**6. Resultantly, the appeal of the appellant assessee is allowed in terms of aforesaid observation.**

In terms of rule 34 of ITAT Rules, 1963 the order is pronounced in the open court on this Tuesday 01<sup>st</sup> day of December, 2022.

**-S/d-  
S.S. GODARA  
JUDICIAL MEMBER**

**-S/d-  
G. D. PADMAHSHALI  
ACCOUNTANT MEMBER**

पुणे / PUNE ; दिनांक / Dated : 01<sup>st</sup> day of December, 2022.

Ashwini

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

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

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