

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 2281/PUN/2017
निर्धारण वर्ष / Assessment Year : 2007-08

Mrs. Villo Noshir Anklesaria
Plot No.10/3, Sr. No.29,
Dhunjibhoy & Sanas Compound,
NIBM Road, Kondhwa,
Pune-411 048.
PAN : AAZPA3341F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-4, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 01.06.2021
घोषणा की तारीख / Date of Pronouncement : 14.06.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeals)-7, Pune dated 30.06.2017 for the assessment year 2007-08
as per the following grounds of appeal on record :

"1. The learned Assessing Officer had erred on the facts and in the circumstances of the case and on questions of law in levying the penalty u/s.271(1)(c) of the Income Tax Act, 1961, when there is no bona-fide intention of concealment or furnishing of inaccurate particulars of income.

2. The learned Assessing Officer had erred on the facts and in the circumstances of the case and on questions of law without appreciating the facts that the assessee has co-operated with the department in the whole proceedings of assessment.

3. The learned Assessing Officer had erred on the facts and in the circumstances of the case and on questions of law without appreciating the facts that there were two appeals were pending before the Pune Bench of ITAT u/s.253 of the Income Tax Act, 1961, at the time of proceedings and the proceeding are eligible to stay till the two appeals were disposed off.

4. The appellant craves permission to add, to delete or amend any of the grounds of appeal.”

2. At the time of hearing, none appeared on behalf of the assessee. The submissions of the Ld. DR were recorded and appeal of the assessee was heard on merits.

3. The brief facts in this case are that the assessee is an individual and derived income from house property, profit and gains of business & profession and other sources. The assessee has filed return of income on 31.10.2007 declaring total income of Rs.14,46,578/- and the total income was assessed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') to Rs.58,98,783/- by the Assessing Officer on 29.12.2009. The Assessing Officer also imposed penalty of Rs.9,37,580/- u/s.271(1)(c) of the Act on 29.03.2012.

4. In this case, penalty was levied u/s.271(1)(c) of the Act for making certain wrong claims in the return of income. There is no finding of the Assessing Officer or the Ld. CIT(Appeals) regarding the concealment of income or furnishing of inaccurate particulars of income. The only reason for imposing penalty u/s.271(1)(c) of the Act was that claim made by the assessee for deduction u/s.54F of the Act was not correct claim as per observation of the Department.

5. The Hon'ble Karnataka High Court in the case of **CIT & Anr. v. Manjunatha Cotton and Ginning Factory, 359 ITR 565 (Karn.)** has opined that since penalty proceedings are separate proceedings than that with assessment, the charges must be specific and facts and circumstances should demonstrate that there is concealment of income or furnishing of inaccurate particulars of income. In another case of **CIT v. SSA's Emerald Meadows [2016] 73 taxmann.com 241**, wherein the Hon'ble Karnataka High Court following its own decision in the case of CIT v. Manjunatha Cotton & Ginning factory (supra) took a view that imposing of penalty u/s 271(1)(c) of the Act is bad in law and invalid for the reason that the show cause notice u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income. The charge has to be specific in accordance with the facts of the case.

6. Further, the Hon'ble Supreme Court in the case of **CIT Vs. Reliance Petroproducts Pvt. Ltd. (322 ITR 158) (SC)** wherein after going through the meaning of the words "furnishing of inaccurate particulars" has held as under;

- Mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing of inaccurate particulars regarding the income of the assessee. Such claims made in the return of income cannot amount to furnishing of inaccurate particulars.
- Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself, would not attract penalty u/s. 271(1) (c) of the Income Tax Act.
- Unless there is a finding that any details supplied by the assessee in its return of income were found to be incorrect or erroneous or false, there is no question of levying penalty u/s. 271(1)(c).
- If the contentions of the revenue are accepted, then in case of every return where claim is not accepted by the Assessing Officer

for any reason, the assessee will invite penalty u/s. 271(1)(c). That is clearly not the intention of the Legislature.

7. It is quite evident that assessee had declared the full facts; the full factual matrix or facts were before the Assessing Officer while passing the assessment order. It is another matter that the claim based on such facts were found to be inadmissible. This is not the same thing as furnishing inaccurate particulars of income as contemplated under Section 271(1) (c) of the Act.

8. In view of the judicial pronouncements referred above, it is settled proposition of the law that a misconceived or wrong claim for deduction or exemption in the return of income filed does not automatically attract penalty under Section 271(1)(c) of the Act. Just for making wrong claims made advertently or inadvertently, therefore, penalty cannot be levied u/s.271(1)(c) of the Act and further the Lower Authorities have not given any findings regarding either “concealment of income” or “furnishing of inaccurate particulars of income” by the assessee. We are of the considered view, this is not a fit case for imposing penalty and accordingly, we set aside the order of the Ld. CIT(Appeals) and direct the Assessing Officer to delete the penalty from the hands of the assessee.

9. In the result, **appeal of the assessee is allowed.**

Order pronounced on 14th day of June, 2021.

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 14th June, 2021
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-7, Pune.
4. The CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	01.06.2021	Sr.PS/PS
2	Draft placed before author	14.06.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		