

**आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE
(THROUGH VIRTUAL COURT)**

**BEFORE SHRI D. KARUNAKARA RAO, AM
AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No.750/PUN/2019

Smt. Vimalaben B. Patel
6, Dev Enclave, Line Ali,
Panvel, Dist – Raigad - 410206

PAN : AMCPP6189P

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-5, Panvel

.....प्रत्यर्थी / Respondent

Assessee by : Shri Hari Krishan
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 03-06-2020

घोषणा की तारीख / Date of Pronouncement : 03-06-2020

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Ld. CIT(A)-2, Thane, dated 07.03.2019.

2. Brief facts of the case are that the assessee derives interest income from partnership firm M/s. Mateshwari Enterprises. The assessee for the year under consideration had filed return of income declaring total income of Rs.1,70,114/- on 31.03.2008. The case was selected for scrutiny. The

Assessing Officer assessed the total income of assessee at Rs.17,16,636/-. The Assessing Officer made various additions at Rs.15,46,522/- and initiated penalty proceedings u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') and accordingly levied the penalty.

3. The CIT(A) has upheld the penalty imposed by the Assessing Officer.

4. Aggrieved with the order the CIT(A), the assessee is in appeal before us.

5. This case pertains to A.Y. 2007-08 and involves limb issue of penalty u/s 271(1)(c) of the Act of the Act.

6. At the very outset, Ld. Counsel for the assessee submitted demonstrating from the order of Assessing Officer at page 24 in para 14, where in the assessment order, penalty proceedings were initiated by the Assessing Officer for concealment of income and thereafter in penalty order at para 5, the Assessing Officer has invoked both limbs u/s 271(1)(c) of the Act i.e. concealment of income and furnishing of inaccurate particulars of income. It was vehemently argued by the Ld. Counsel for the assessee that no satisfaction was recorded by the Assessing Officer and therefore, penalty order be cancelled.

7. Per contra, ld. DR relied on the orders of authorities below.

8. We have heard the rival contentions and perused the material available on record. On considering the facts of the above case and perusing the relevant documents, we find that it is very evident from para 5 of penalty order which is extracted below, the penalty was initiated for both the limbs of section 271(1)(c) of the Act, whereas in the assessment order at para 14, page 24, which is again extracted below, the penalty was only initiated for concealment of income.

Para 5 of Penalty order

“5. In view of the above the explanation of the assessee is hereby rejected. Thus, I am satisfied that the assessee has furnished inaccurate particulars of such income and concealed the taxable income within the meaning of section 271(1)(c) of the I.T. Act, 1961. Therefore, a penalty of ₹ 48,440/- is levied U/s 271(1)(c) of the I.T. Act, 1961 against the maximum penalty leviable at the three times of the above penalty levied.”

Para 14 of assessment order

“14. As regards the addition on account of assessee's share in the unexplained expenditure of Rs.14,07,083/-, it is submitted by the AR that the capital is brought in by partners into the firm by Smt. Vimlaben B Patel at Rs.75,000/-. However, no corroborative evidences so as to substantiate assessee's claim, has been furnished. Therefore, in absence of the same, addition of Rs.1,54,779/- being profit sharing ratio at 11% of Rs.14,07,083/- is hereby made to the assessee's total income as unexplained investment. As the assessee has concealed his income to the above effect, therefore penalty proceedings u/s 271(1)(c) are separately initiated.”

9. Therefore, there is an ambiguity in the mind of Assessing Officer while imposing penalty and it is settled position of law that whenever penalty is to be imposed, the assessee must have a chance of self defence, which is as per principles of natural justice and in this, since satisfaction was not recorded by the Assessing Officer but obvious the assessee was unable to prepare his defence whether penalty was imposed for concealment or furnishing of inaccurate particulars of income. In such circumstances, the law is very clear that there could not be any imposition of penalty u/s 271(1)(c) of the Act. We, therefore, cancel the penalty.

Accordingly, we direct the Assessing Officer to cancel the penalty. Thus, the grounds raised by assessee are allowed.

10. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 3rd June, 2020.

Sd/-
D. KARUNAKARA RAO
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 3rd June, 2020

GCVSR

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

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

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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