

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE

**SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

ITA No. 1407/PUN/2018 : A.Y. 2013-14

The Dy. CIT Cir. 8, Pune.

Appellant

Vs.

M/s. Mahalaxmi Realtors
Near Hotel Gandharva
Pune Nashik Highway
Aland Phata,
Pune-415 501
PAN: AAVFM 1428 K

Respondent

Appellant by : Shri Rajiv Thakkar
Respondent by : Shri Arvind Desai

Date of Hearing : 10-08-2022
Date of Pronouncement : ____-08-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JM

This appeal preferred by the Revenue emanates from order of the Id. Commissioner of Income Tax (Appeals)-8, Pune, dated 10-05-2018 for the Assessment Year 2013-14 as per the grounds of appeal on record.

2. At the outset, the Id. D.R. submitted that the only grievance of the revenue in this appeal is with regard to deletion of penalty u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to "the Act" for short) by the Id. CIT(A). Explaining the crux of the issue, the Id. D.R submitted that during the survey certain income was declared by the assessee and such declared income was also offered for taxation in the return of income. The A.O still imposed penalty on such declared income. The Id. D.R fairly submitted that this is not a case for imposing penalty u/s 271(1)(c) of the Act.

3. We are of the considered view after hearing the submissions of the Id. D.R and perusing the material on record that once the income has been

declared and filed in the return of income, the A.O is not justified further to impose penalty on such declared income since there is no loss occurred to the Revenue. The penalty u/s 271(1)(c) of the Act is leviable if the A.O is satisfied in the course of any proceedings under this Act that any person has concealed the particulars of his income or furnished inaccurate particulars of such income. It is a certain position that assessment proceedings and penalty proceedings are separate and distinct and as held by Hon'ble Supreme Court in the case of Anantharam Veerasinghaiah & Co. Vs. CIT (1980) 123 ITR 457 (SC) the findings in the assessment proceedings cannot be regarded as conclusive for the purpose of the penalty proceedings. It is also well settled that the criteria and yardstick for the purpose of imposing penalty u/s 271(1)(c) are different than those applied for making or confirming the addition. It is therefore, necessary to re-appreciate and re-consider the matter so as to find out as to whether the addition or disallowance made in quantum proceedings actually represent the concealment on the part of the assessee as envisaged u/s 271(1)(c) of the Act and whether it is a fit case to impose penalty by invoking the said provision. The provision of section 271(1)(c) of the Act stipulated that if the A.O or CIT(A) in the course of proceedings under this Act is satisfied that any person has concealed particulars of his income or furnished inaccurate particulars thereof he may direct that such person shall pay by way of penalty a sum which shall not be less than one but which shall not exceed three times the amount of tax sought to be evaded by a reason of the concealment of particulars of his income. Therefore, it is incumbent upon the revenue authorities to arrive at a satisfaction whether it is a particular case for imposition of penalty u/s 271(1)(c) of the Act. The penalty cannot be imposed in a methodological manner but it can only be imposed if it is required in the facts and circumstances of the case suggesting and confirming any concealment or furnishing of inaccurate particulars of income by the assessee.

In the present case before us, the assessee has declared his income and has filed such declared income in his return of income. Therefore, there is true element of bonafideness in the conduct of the assessee. It cannot be spelt out in such circumstances that he has either concealed his income or has furnished inaccurate particulars of his income. What is to be seen in the instant case is whether declaration made by the assessee was bonafide and whether all the material facts relevant thereto have been furnished and we find that the assessee succeeds on this count since the declared income has been shown in the return of income and therefore the assessee cannot be held liable for penalty u/s 271(1)(c) of the Act. The revenue authorities have not been able to establish that the conduct of the assessee while declaring income and filing such declared income in the return of income was not bonafide or that any specific particulars were concealed or inaccurate particulars were furnished.

4. The Hon'ble Supreme Court in *CIT Vs. Reliance Petro products 322 ITR 158 (SC)* has held that no penalty should be imposed when the assessee adopts a *bona fide* view and has declared all the necessary particulars concerning the income in dispute. Since the view of the Id. CIT(A) is in accordance with the *ratio* laid down in the *Reliance Petroproducts (supra)*, we endorse the same.

5. In view of the above, we hold that the order of the CIT(A) in deleting the penalty cannot be faulted with. The grounds raised by the Revenue are dismissed.6. In the result, the **appeal of Revenue is dismissed.**

Order pronounced in the open Court on this 24th day of August 2022

Sd/-
(R.S. SYAL)
VICE PRESIDENT
 Pune; Dated, the ____ day of August 2022
 Ankam

sd/-
(PARTHA SARATHI CHAUDHU)
JUDICIAL MEMBER

Copy of the order is forwarded to :

1. The Appellant
2. The Respondent.
3. The Pr. CCIT, Pune
4. The CIT(A)-8 Pune
5. D.R. ITAT 'B' Bench
5. Guard File

BY ORDER,

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Sr. Private Secretary
ITAT, Pune.

1	Draft dictated on	11-08-2022	Sr.PS/PS
2	Draft placed before author	18-08-2022	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	24-08-2022	Sr.PS/PS
7	Date of uploading of order	24-08-2022	Sr.PS/PS
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