

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.594 & 595/PUN/2019
निर्धारण वर्ष / Assessment Years: 2011-12 & 2012-13

| | | |
|---|-----|-----------------------|
| Kirloskar Chillers Pvt. Ltd., 8 th Floor, Cello Platina, Fergusson College Road, Shivajinagar, Pune-411005. PAN : AABCK1730B | Vs. | JCIT, Range-11, Pune. |
| Appellant | | Respondent |

Assessee by : Shri C. H. Naniwadekar
Revenue by : Shri S. P. Walimbe

Date of hearing : 03.08.2022
Date of pronouncement : 23.08.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the appeals filed by the assessee directed against the different orders of Id. Commissioner of Income Tax (Appeals)- 4, Pune [‘the CIT(A)’] dated 01.02.2019 for the assessment years 2011-12 and 2012-13 respectively.

2. Since the identical facts and common issues are involved in all the above captioned two appeals of the assessee, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.594/PUN/2019 for the assessment year 2011-12 are stated herein.

ITA No.594/PUN/2019, A.Y. 2011-12 :

4. The appellant raised the following grounds of appeal :-

“1. The learned CIT(A) erred on facts and in law in upholding penalty of Rs.7,25,958/- levied on assessee without appreciating the facts and submissions made before the learned A.O. as well as learned CIT(A) in this behalf.

2. The appellant craves leave to add, alter, delete or substitute all or any of the above grounds of appeal.”

5. Briefly, the facts of the case are that the appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacture and sale of various types of chillers, viz. Centrifugal & Screw together with their parts and accessories. The return of income for the assessment year 2011-12 was filed on 30.09.2011 declaring total income of Rs.9,35,23,872/-. Subsequent to filing the return of income, the survey operations were conducted in the residential and business premises of the appellant on 09.01.2013. During the course of such survey proceedings, the director of the appellant company admitted additional income of Rs.22,62,859/- on account of bogus purchases. Accordingly, the appellant company filed a revised return of income

on 13.03.2013, offered the said additional income. Against the said return of income, the assessment was completed by the Jt. Commissioner of Income Tax, Range-11, Pune ('the Assessing Officer') vide order dated 10.03.2014 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') accepting the returned income. The Assessing Officer also initiated penalty proceedings holding the appellant guilty of concealment of particulars of income as well as furnishing inaccurate particulars of income and proceeded with levy of penalty u/s 271(1)(c) of the Act vide order dated 24.09.2014.

6. Being aggrieved by the order of levy of penalty, an appeal was filed before the Id. CIT(A), who vide impugned order confirmed the levy of penalty on the ground that the appellant had revised the return of income consequent to the detection of concealed income during the course of survey proceedings.

7. Being aggrieved, the appellant is in appeal before us in the present appeal.

8. It is submitted before us that there is no variation between the returned income and assessed income, therefore, no penalty can be levied u/s 271(1)(c) of the Act. He placed reliance on the decision of the Hon'ble Delhi High Court in the case of CIT vs. SAS Pharmaceuticals 335 ITR 259 (Delhi).

9. On the other hand, ld. CIT-DR submits that the assessee had filed revised return of income only after detection of concealed income during the course of survey proceedings and, therefore, the fact that the assessee disclosed the additional income by filing the revised return of income does not absolve the appellant from the penalty proceedings.

10. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to whether the Assessing Officer was correct in law in levying penalty of Rs.7,25,958/- u/s 271(1)(c) of the Act, when the assessee had shown additional income in the revised return of income. The Hon'ble Delhi High Court in the case of SAS Pharmaceuticals (supra) involving the identical facts held that no penalty could be imposed as there was no concealment or furnishing inaccurate particulars of income as the assessee had made a complete disclosure in the return of income and offered the additional amount for the purpose of tax. The relevant paragraph of the said judgment of the Hon'ble Delhi High Court (supra) are as under :-

“15. It necessarily follows that concealment of particulars of income or furnishing of inaccurate particular of income by the assessee has to be in the income-tax return filed by it. There is sufficient indication of this in the judgment of this Court in the case of CIT v. Mohan Das Hassa Nand [1983] 141 ITR 203 / 13 Taxman 328 and in Reliance Petroproducts (P.) Ltd. (supra), the Supreme Court has clinched this

aspect, viz., the assessee can furnish the particulars of income in his return and everything would depend upon the income-tax return filed by the assessee. This view gets supported by Explanation 4 as well as Explanations 5 and 5A to section 271 of the Act as contended by the learned counsel for the respondent.

16. No doubt, the discrepancies were found during the survey. This has yielded income from the assessee in the form of amount surrendered by the assessee. Presently, we are not concerned with the assessment of income, but the moot question is to whether this would attract penalty upon the assessee under the provisions of section 271(1)(c) of the Act. Obviously, no penalty can be imposed unless the conditions stipulated in the said provisions are duly and unambiguously satisfied. Since the assessee was exposed during survey, may be, it would have not disclosed the income but for the said survey. However, there cannot be any penalty only on surmises, conjectures and possibilities. Section 271(1)(c) of the Act has to be construed strictly. Unless it is found that there is actually a concealment or non-disclosure of the particulars of income, penalty cannot be imposed. There is no such concealment or non-disclosure as the assessee had made a complete disclosure in the income-tax return and offered the surrendered amount for the purposes of tax.”

11. The ratio of the Hon'ble Delhi High Court (supra) is squarely applicable to the facts of the present case. Therefore, we reverse the order of the ld. CIT(A) confirming the levy of penalty and direct the Assessing Officer to delete the penalty of Rs.7,25,958/- u/s 271(1)(c) of the Act.

12. In the result, the appeal of the assessee in ITA No.594/PUN/2019 for A.Y. 2011-12 stands allowed.

ITA No.595/PUN/2019, A.Y. 2012-13 :

13. Since the facts and issues involved in both the above appeals are identical, therefore, our decision in ITA No.594/PUN/2019 for

A.Y. 2011-12 shall apply *mutatis mutandis* to the appeal of the assessee in ITA No.595/PUN/2019 for A.Y. 2012-13. Accordingly, the appeal of the assessee in ITA No.595/PUN/2019 for A.Y. 2012-13 stands allowed.

14. To sum up, both the above appeals filed by the assessee stand allowed.

Order pronounced on this 23rd day of August, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 23rd August, 2022.

Sujeet

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

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

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.