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

सुश्री सुषमा चावला, न्यायिक सदस्य
एवं श्री आर. के. पांडा, लेखा सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM
AND SHRI R.K. PANDA, AM

आयकर अपील सं. / ITA Nos.1768 to 1771/PN/2014
निर्धारण वर्ष / Assessment Years : 2006-07 & 2009-10

Yogita Badgujar,
204, Pashupatinath,
C-02, B Wing,
Mahadev Sankalp Complex,
Gandhare Villar,
Near Khadakpada Chowk,
Kalyan (West) Thane – 421 301
PAN No.ANKPB5184H

..........अपीलार्थी / Appellant

बनाम v/s

ITO, Central-I, Nashik

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingte
प्रत्यर्थी की ओर से / Respondent by : Shri Anil Chaware

सुनवाई की तारीख / Date of Hearing :12.07.2016		घोषणा की तारीख / Date of Pronouncement:14.07.2016

आदेश / ORDER

PER R.K.PANDA, AM :

The above 4 appeals filed by the assessee are directed against the common order dated 08-09-2014 of the CIT(A)-I, Nashik relating to the Assessment Years 2006-07 & 2009-10 respectively. Since identical grounds have been taken by the assessee in these appeals, therefore, these appeals were heard together and are being disposed of by this common order.

2. The assessee in all these appeals has challenged the order of the CIT(A) in confirming the penalty levied by the AO u/s.271(1)(c) for different years which are as under :

Asst. Year	Penalty
2006-07	15,394/-
2007-08	12,728/-
2008-09	4,271/-
2009-10	5,336/-

3. Facts of the case, in brief, are that the assessee is a reseller of cloths and derives income from other sources. A search and seizure action us/.132 of the I.T. Act was conducted in Suyojit group of cases on 17-09-2010. The residential premises of one of its Directors namely Shri Anant Keshav Rajegaonkar were also searched u/s.132. During the course of search certain incriminating documents pertaining to the above assessee were seized from the searched premises. In response to notice u/s.153C the assessee filed the return of income on 17-12-2012 declaring total income of Rs.2,17,963/- including additional income of Rs.83,993/-. Similar returns were also filed for other different years. The AO completed the assessment u/s.143(3) r.w.s.153 of the I.T. Act accepting the returned income which was filed in response to notice u/s.153C. Since the assessee had disclosed additional income of Rs.83,996/- as a result of search action the AO initiated penalty proceedings u/s.271(1)(c) of the I.T. Act. Rejecting the various explanations given by the assessee the AO levied penalty of Rs.15,394/- being 100% of the tax sought to be evaded. Similarly, penalty has been levied by the AO for other years also, the details of which are summarized as under :

Asst Year	2006-07	2007-08	2008-09	2009-10
Appeal No.	1768	1769	1770	1771
Penalty levied u/s. 271 (1)(c)	15394.00	12728.00	4271.00	5336.00
Original Return of Income filed on	3/31/2008	3/31/2008	3/31/2009	7/30/2010
Total Income Returned	133970.00	134500.00	250940.00	434210.00
Search on Suyojit Group dt.	9/17/2010	9/17/2010	9/17/2010	9/17/2010
Notice u/s. 153C dt.	7/30/2012	7/30/2012	7/30/2012	7/30/2012
ROI of Income u/s.153C filed on	12/17/2012	12/17/2012	12/17/2012	12/17/2012
Total Income Returned	217963.00	204891.00	264758.00	460106.00
Original Income	133970.00	134500.00	250940.00	434210.00
Bank Interest (Additional Income)	83993.00	70391.00	13818.00	25896.00
Order u/s. 143(3) r.w.s. 153C dt.	3/28/2013	3/28/2013	3/28/2013	3/28/2013
Assessed Income	217963.00	204891.00	264758.00	460106.00

4. Before CIT(A) it was argued that penalty proceedings u/s.271(1)(c) of the I.T. Act is not leviable as the AO had accepted the return filed in response to notice u/s.153C. However, the CIT(A) was not satisfied with the explanation given by the assessee. Relying on the decision of the Pune Bench of the Tribunal in the case of Chhoriya group of cases vide ITA Nos.1389 to 1395/PN/2012 and batch of other appeals order dated 20-12-2013 he held that provisions of Explanation 5A to section 271(1)(c) of the Act are applicable to the facts of the present case since the assessee has concealed his income and evaded tax in the original return.

5. As regards the contention of the assessee that she has voluntarily made disclosures is concerned, he held that the same is not tenable in the light of seizure of various papers/documents giving details of her unaccounted transaction. He also relied on the decision of the Hon'ble Supreme Court in the case of Mak Data Pvt. Ltd. where it has been held that while levying the penalty u/s.271(1)(c) of the Act, the AO shall not be carried away by the belief of the assessee "Voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc., to explain its conduct.

Rejecting the various explanations given by the assessee and distinguishing the various decisions he upheld the penalty levied by the AO u/s.271(1)(c) of the Act.

6. Aggrieved with such order of the CIT(A) the assessee is in appeal before us.

7. The Ld. Counsel for the assessee strongly challenged the order of the CIT(A) in confirming the penalty levied by the AO. He submitted that the provisions of Explanation 5A to section 271(1)(c) are not applicable to the facts of the present case. Referring to the said explanation he submitted that Explanation 5A(ii) is applicable to a case where in the course of search initiated u/s.132 on or after the Ist day of June 2007 the assessee is found to be the owner of any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or other transactions represents his income in previous year.

8. He submitted that in the instant case no entries have been found in any books of account and further the assessee has voluntarily disclosed the bank interest as additional income and the same was not detected by the search party or the AO. Therefore, in absence of seizure of any incriminating documents and in absence of any entry in the books of account when the assessee has voluntarily disclosed bank interest income which has been accepted by the AO, therefore, the provisions of Explanation 5A to section 271(1)(c) of the Act are not applicable. He accordingly submitted that the penalty levied by the AO and upheld by the CIT(A) should be deleted.

9. The Ld. Departmental Representative on the other hand heavily relied on the order of the CIT(A).

10. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in his return of income in response to notice u/s.153C has disclosed additional income of Rs.93,993/-, 70,391/-, 13818/- and Rs.25,896/- on account of bank interest for A.Y. 2006-07 to 2009-10 respectively. The AO has also accepted the returns filed in response to notice u/s.153C and no other addition has been made. The details of the original returns filed, returns filed in response to notice u/s.153C disclosing the additional income and the penalty levied etc. are already given in the table at Para No.3 of this order. We find the AO levied penalty in all these years by invoking the provisions of Explanation 5A to section 271(1)(c) which has been upheld by the Ld.CIT(A). It is the submission of the Ld. Counsel for the assessee that the provisions of Explanation 5A to section 271(1)(c) are not applicable to the facts of the present case, since in her case, no such entries were found in the books of account.

11. We find some force in the above arguments advanced by the Ld. Counsel for the assessee. The provisions of Explanation 5A to section 271(1)(c) of the I.T. Act read as under :

> "[Explanation 5A – Where, in the course of a search initiated under section 132 on or after the Ist day of June, 2007, the assessee is found to be the owner of –
>
> (i) any money, bullion, jewellery or other valuable article or thing (hereafter in this Explanation referred to as assets) and the assessee claims that such assets have been acquired by him by utilizing (wholly or in part) his income for any previous year; or

(ii) any income based on any entry in any books of account or other documents or transactions and he claimed that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year,

Which has ended before the date of search and –

(a) where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or

(b) the due date for filing of the return of income for such previous year has expired but the assessee has not filed the return,

then notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.]

12. In the instant case, a perusal of the order nowhere says that such entries were found in the books of account of the assessee. Further, a perusal of the order does not show that the additional income declared by the assessee on account of bank interest was detected as a result of search in the case of Suyojit group of cases. The assessee in the instant case has voluntarily offered the bank interest as additional income for the above 4 years in the returns filed in response to notice u/s.153C and the AO has accepted such return filed in response to notice u/s.153C without making any further addition. Under these circumstances, when no incriminating material was found showing the earning of such bank interest by the assessee and since the assessee has voluntarily offered the bank interest as additional income in the return filed in response to notice u/s.153C, therefore, we are of the considered opinion that the provisions of Explanation 5A to section 271(1)(c) of the Act are not applicable to the facts of the present case.

13. The decision of the Pune Bench of the Tribunal in the case of

Chhoriya group relied on by the Ld. CIT(A) in our opinion is not applicable to the facts of the present case since the facts in that case are different from the facts of the present case. In this view of the matter, we are of the considered opinion that it is not a fit case for levy of penalty by invoking the provisions of Explanation 5A to section 271(1)(c) of the I.T. Act. We accordingly set aside the order of the CIT(A) and direct the AO to cancel the penalty.

14. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the open court on 14-07-2016.

Sd/-	**Sd/-**
(**SUSHMA CHOWLA**)	(**R.K. PANDA**)
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated :14th July , 2016.
सतीश

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील)- The CIT(A)-I, Nashik
4. आयकर आयुक्त / The CIT (Central), Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" पुणे / DR, ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

//सत्यापित प्रति //True Copy //

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