

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-1', NEW DELHI**

Before Sh. Bhavnesh Saini, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 7108/Del/2018 : Asstt. Year : 2009-10

Sukhdev Singh, C-66, Surya Nagar, Ghaziabad, U.P.-201001	Vs	Income Tax Officer, Ward-2(3), Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. ABBPS0078E		

Assessee by : Divyansh Jain, Adv.

Revenue by : Sh. Prakash Dubey, Sr. DR

Date of Hearing: 18.01.2021	Date of Pronouncement: 02.03.2021
------------------------------------	--

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-2, Noida dated 13.09.2018.

2. Following grounds have been raised by the assessee:

"1. *That on the facts and circumstances of the case, the penalty order passed by the learned Commissioner of Income Tax (Appeals) (Ld. CIT (A)) under section 271(1)(c) of the Act is bad, both in the eyes of law and on facts.*

2.(i) *That on the facts and in the circumstances of the case, the initiation of penalty proceedings u/s 271(1)(c), is bad in law, as order passed u/s 250(6) of the Act in which penalty proceedings initiated is itself being bad in law and a nullity.*

(ii) That the order u/s 250(6) of the Act is itself null and void being the said order passed in violation of settled law that CIT(A) has no power to assess new source of income, which was not subject matter of original assessment.

3. That on the facts and circumstances of the case, the penalty order passed u/s 271(1)(c) of the Act by the Ld. CIT(A) on the total amount of addition of Rs.1,90,18,000/- is contrary to the view taken by him that wrong addition made by the AO is modified and enhanced from Rs.43,25,000/- to Rs.1,90,18,000/-. Thus penalty order passed by the Ld. CIT(A) is bad in law and liable to be quashed.

4. That on the facts and circumstances of the case, the Ld CIT(A) erred in imposing penalty u/s 271(1)(c) of the Act on the total amount of addition of Rs.1,90,18,000/- which includes amount of addition of Rs.43,25,300/- made by the AO on which penalty has already been imposed Thus penalty imposed by the Ld CIT(A) on amount of Rs.43,25,300/- tantamount to double penalty which is bad in law and liable to be cancelled.

Without prejudice to the above

5. That on the facts and in the circumstances of the case the Ld. CIT(A) erred in law issuing show cause notice u/s 274 r.w.ss 271 of the Act without specifying under which limb of section 271(1)(c) penalty proceedings has been initiated i.e. either for concealment of income or for fishing of inaccurate particulars of income, is invalid and penalty order so passed is without Jurisdiction and is bad in law and is liable to be quashed.

6. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law in mechanically and arbitrarily passing the penalty order u/s 271(1)(c) of the Act without recording necessary satisfaction that either the appellant has concealed particulars of income or furnished inaccurate particulars of income as these two connotation are mutually exclusive.

Hence the penalty order passed u/s 271(1)(c) of the Act is without jurisdiction and is null and void.

7. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred both in law and on facts in imposing penalty u/s 271(1)(c) of the Act without appreciating the fact that there was no concealment or furnishing of inaccurate particulars of income as contemplated u/s 271(1)(c) as the alleged addition made on account of capital gain in the hands of the appellant has never been earned by the appellant and is sub-judice before the Hon'ble Bench of ITAT."

3. The addition has been made on protective basis in the hands of the assessee namely Shri Sukhdev Singh and substantive basis in the hands of two persons namely Sh. Kamaldeep Singh and Shri Kamal Ashish Singh being the Power of Attorney holders.

4. The substantive assessments has been made by the ITO, Ward-2, Phagwara and confirmed by the Id. CIT (A), Jalandhar. Further, the Co-ordinate Bench of ITAT in ITA No. 721(Amritsar) of 2007 dated 24.06.2019 confirmed the addition in the case of one of the Power of Attorney holders wherein it was categorically held that the sale consideration has been received by the Power of Attorney holders and hence they are liable to pay the capital gains.

5. Owing to the order of the Co-ordinate Bench of Tribunal at Amritsar in the case of the Power of Attorney holder, the protective addition and the subsequent enhancement made by the Id. CIT (A) has been deleted by the by the Co-ordinate Bench of ITAT at Delhi in ITA No. 3590/Del/2018 for the assessment year 2009-10. Since, as on now, the quantum addition stands deleted and

hence the penalty levied u/s 271(1)(c) cannot be sustained.

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

Order Pronounced in the Open Court on 02/03/2021.

Sd/-

(Bhavnes Saini)
Judicial Member

Dated: 02/03/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR