

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER  
&  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

**I.T.A .No.-1836/Del/2015  
(ASSESSMENT YEAR-2007-08)**

Ishween Kaur, M-53, 2 <sup>nd</sup> Floor, Rajouri Garden, New Delhi. <b>ABDPK5929J</b>	vs	ITO, Ward 26(1), New Delhi.
<b>Appellant by</b>	<b>Shri C.S. Anand, Adv.</b>	
<b>Respondent by</b>	<b>Sh. Ved Prakash Mishra, Sr. DR</b>	

<b>Date of Hearing</b>	<b>03.12.2015</b>
<b>Date of Pronouncement</b>	<b>11.12.2015</b>

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER:**

The present penalty appeal has been filed by the assessee against the order of the ld. CIT(A)-15, Delhi vide his order dated 17/02/2015 for A.Y. 2007-08 on the following grounds:

1. *“That the order dated 08.03.2015 passed the ld. CIT(A) is bad on various legal and factual grounds.*
2. *That the penalty order deserves to quashed because the charge is not precise.*
3. *That on the facts of the case and under the law, the ld. CIT(A) has erred in holding that the ld. Assessing Officer’s action of imposing penalty u/s 271(1)(c) is fully justified.”*

2. The assessee had filed its return declaring a total income of Rs. 2,72,270/- on 31/03/2008. The case was selected for scrutiny and notices were issued to the assessee. During the assessment the ld. Assessing Officer observed that the assessee had deposited certain cash on various dates. The case was adjourned several times during the assessment proceedings. On 17/12/2009 the assessee appeared and stated that the cash deposited is out of sale proceeds of jewellery amounting to Rs. 5,46,892/- and balanced cash was deposited out of unsecured loans received from relatives. It was observed in the assessment proceedings that the assessee had not filed any documentary evidence for these unsecured loans. The case was further adjourned 2-3 times thereafter. As the assessee failed to file the sources of cash deposited amounting to Rs. 13,38,000/- the ld. Assessing Officer finalized the assessment u/s 144 and made an addition amounting to Rs. 13,38,000/- to the income of the assessee. He also initiated the penalty proceedings. Thereafter notice u/s 274 read with 271 was issued to the assessee on 30/12/2009. Even at the time of penalty proceedings the assessee has not furnished any details regarding the loan taken from different persons as well as any confirmation affidavits relating to the same. The ld. Assessing Officer, therefore, levied a penalty of Rs. 4,37,333/- for filing inaccurate particulars of income.

3. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the ld. CIT(A). It is submitted by the ld. AR that the quantum appeal filed by the assessee for the present

assessment year has been disposed of by this Tribunal against which an MA has been preferred by the assessee.

4. We have heard the rival contentions and submissions by both the parties.

5. It is submitted by the ld. AR that the notice issued by the Assessing Officer u/s 274 read with section 271 of the Act at the time of initiation of penalty proceedings does not specify as to under which limb the notice has been issued. It is also noted that the Assessing Officer in the assessment order has not initiated the penalty under any particular charge. In the case of CIT vs. Atul Mohan Bindal reported in (2009) 9 SCC 589 the Hon'ble Supreme Court has considered a similar situation. It has been observed by the Hon'ble SC that the Assessing Officer has to be satisfied that a person has concealed the particulars of income or furnished inaccurate particulars of such income. Thus, satisfaction of the Assessing Officer about the concealment of particulars of income or furnishing of inaccurate particulars of such income is essential before levying any penalty u/s 271(1)(c) of the Act. It is apparent from the phase of the record before us that the Assessing Officer has merely initiated the penalty proceedings in the assessment order. Without specifying under which limb the Assessing Officer is satisfied for levying the penalty. It is necessary u/s 274 of the Act to issue such notice u/s 271(1)(c) of the Act, wherein it has been mentioned as to whether the penalty proceedings has been initiated for furnishing inaccurate particulars of income or has concealed the particulars of income.

6. We have observed from the order of the ld. CIT(A) that it is an undisputed fact that the notice issued u/s 274 read with section 271(1)(c) did not specify the limb under which the penalty proceedings has been initiated. The ld. CIT(A) in para 6.4 of his order records as under:

*6.4 "The view of ld. CIT(A) has been affirmed by the Hon'ble ITAT. Therefore, there remains no suspicion that the appellant was in possession of unexplained cash amounting to Rs. 13,38,000/- which had surfaced in her bank account and ultimately got invested towards purchase of properties. The appellant definitely concealed her undisclosed income and tried to explain it as capital receipt in the form of loan or sale of jewellery. However, such explanation of the appellant remained unsubstantiated. The appellant's case is covered by all of the limbs of section 271(1)(c) of the Act and, therefore, specifying any particular limb of the section for imposing of penalty on the part of the Assessing Officer does not remain important. The Assessing Officer action the imposing penalty u/s 271(1)(c) is fully justified. Grounds of appeal are therefore, dismissed."*

7. It appears from the above findings of the ld. CIT(A) that the penalty proceedings were confirmed by the ld. CIT(A) as the Hon'ble ITAT had affirmed the additions made by the ld. Assessing Officer in the quantum appeal. It is, therefore, apparent from the record that the entire penalty proceedings have been initiated on the ground that the notice issued was not in accordance with law. We, therefore, following the case of the Hon'ble Karnataka High Court in the case of CIT vs. Manju Natha Cotton and Ginning Factory & Others, reported in (2013) 359 ITR 565 hold that the penalty proceedings suffers from grave illegalities. Merely because the

addition made by the ld. Assessing Officer has been confirmed by this Tribunal is not conclusive to levy the penalty u/s 271(1)(c) as both the penalty proceedings as well as the quantum proceedings are independent from each other. We, therefore, allow the grounds of appeal filed by the assessee.

8. In the result, the appeal filed by the assessee is allowed.

**The order is pronounced in the open court on  
11.12.2015**

**Sd/-  
(N.K. SAINI)  
ACCOUNTANT MEMBER**

Dated: 11.12.2015

*\*Kavita, P.S.*

**Sd/-  
(BEENA PILLAI)  
JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

		Date
1.	Draft dictated on	08.12.15
2.	Draft placed before author	09.12.15
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	15.12.15
6.	Kept for pronouncement on	11.12.15
7.	File sent to the Bench Clerk	15.12.15
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	
10.	Date of dispatch of Order.	