

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

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 3419/Del /2013
Assessment Year: 2000-01**

Shri Ramesh Chand Garg, Revenue-1/40, Rajangar, Ghaziabad. (PAN: ADHPG1717A)	vs	Income Tax Officer, Ward 2, Hapur.
(Appellant)		(Respondent)

Appellant by : Shri Akhilesh Kumar, Advocate
Respondent by: Shri Atiq Ahmad, Sr. DR

**Date of Hearing : 13.09.2017
Date of Pronouncement: 31.10.2017**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal preferred by the assessee against order dated 19/03/2013 passed by the Ld. Commissioner of Income Tax (Appeals) – Ghaziabad, wherein penalty amounting to Rs. 2,74,000/- imposed under section 271 (1) (c) of the Income Tax Act, 1961 has been confirmed. The appeal pertains to assessment year 2000 – 01.

2. The brief facts of the case are that the return of income in this case was filed declaring an income of Rs. 1,73,920/-. During the course of assessment proceedings, the AO noticed that the assessee had introduced capital of Rs. 12 Lacs in the partnership firm M/s Garg & Company. It was the assessee's explanation before the AO that out of Rs. 12 Lacs, Rs. 10 Lacs represented gifts received from five friends and relatives and Rs. 2 Lacs from personal resources. However, the AO did not accept the assessee's explanation and proceeded to add back Rs. 12 Lacs to the income of the assessee. There were certain other additions also and the matter travelled up to the ITAT.

2.1 The ITAT in the quantum appeal, vide order dated 13/04/2007, in ITA No. 4622/DEL/2003 upheld the addition of Rs. 10 Lacs said to have been received from five friends and relatives. The AO proceeded to impose penalty of Rs. 2,74,000/- on this amount which was confirmed by the Ld. CIT (Appeals). Now the assessee has approached the ITAT and has challenged the permission of the by the CIT appeals by raising the following grounds of appeal –

“1. Because, the order of learned lower authority is bad in law and against the facts and circumstances of the case.

2. *Because, the leaned commissioner of income tax (A), erred in appreciating the provisions of section 275 of the Act, as per which no order of penalty could have been passed in the absence of existence of an order of penalty being passed within the time of limitation may be order dropping the penalty and hence AO had lost the jurisdiction and the order of Ld. CIT(A) upholding penalty order is against the provisions of law.*

3. *Because, in addition to above, the leaned commissioner of income tax (A), erred in upholding the service of notice proper while order is passed without any legal service of notice in terms of section 282 of the Act and consequent order is illegal.*

4. *Because, the leaned commissioner of income tax (A), further erred in not appreciating the fact that factually A.O. himself was not satisfied above the concealment of income or furnishing of inaccurate particulars of income in as much as that as per the order of penalty, AO was satisfied about the concealment of income on a/c of rejecting the gifts by Hon'ble ITAT, and hence observation of Ld. CIT(A) that imposition of penalty itself is sufficient to prove the 'satisfaction' is inherently wrong.*

5. *Because, without prejudice to above and in alternative, on merits the leaned commissioner of income tax (A) erred in sustaining the order of penalty on the line of provision of section 68 and considering the additions as sacrosanct for penalty but without appreciating the facts that,*
 - a) *Identity, capacity etc stands proved on the record with ample of evidences and donors have confirmed the gifts in their personal statements before AO.*

 - b) *There are different quantum of additions by all the three authorities and gifts are accepted by Ld. CIT(A) but rejected by Hon'ble tribunal on the basis of human conduct and probable view.*

c) Assessee has fully discharged the initial onus lay upon him and even prayed to conduct further enquiries while AO failed to discharge the shifted burden lay upon him

In the light of aforesaid grounds, it is hereby prayed that the penalty order imposing penalty u/s 271(1) (c) may kindly be quashed, being totally illegal and arbitrary.”

3. The Ld. Authorised Representative submitted that the imposition of penalty was bad in law as the penalty was confirmed on the transactions which were rejected on the basis of human probability. It was submitted that the affidavits as well as gift deeds from all the donors were furnished before the lower authorities along with copies of income tax returns and bank accounts. It was further submitted that the copies of balance sheets were directly filed by all the donors in person before the AO and also that all the donors had appeared before the AO, confirmed the gifts as also disclosed the relationship with the assessee as well as the source of gifts. It was also submitted that all the gifts were paid through account payee cheques and stood verified from the bank accounts of donors/donee by the AO. Reliance was placed on a plethora of case laws and it was submitted that that the denial of acceptance of gifts in assessment proceedings on basis of human probability may be

justified but the same cannot be the basis for the purpose of levying penalty under section 271 (1) (c) of the Income Tax Act, 1961. It was prayed that the penalty be deleted.

3. The Ld. Departmental Representative, in response, vehemently argued that the penalty had rightly been imposed as even the ITAT had upheld the disallowance/addition pertaining to the alleged gifts. It was submitted that the assessee had failed to discharge the onus cast upon him in this regard and, therefore, it was apparent that there was an active concealment of income/furnishing of inaccurate particulars and as such the penalty was imposable on the facts and circumstances of the case. It was submitted that the penalty order should be upheld.

5. We have heard the rival submissions and have perused the material on record. We are conscious that in the quantum proceedings, the findings of the Assessing Officer have been approved by the ITAT and the order of the ITAT has become final because there is no further appeal filed by the assessee against the said order of the ITAT. However, as has been held by the Hon'ble Apex Court in the case of Khoday Eswarsa and Sons reported in 83 ITR 369 (SC), the penalty cannot be levied solely on the basis of reasons given in the original assessment order.

We have examined the facts of the case for the purpose of penalty proceedings afresh and we clarify that our finding is limited to and relevant for the purpose of determining whether the assessee can be said to have furnished inaccurate particulars of income or have concealed the income so as to make him liable for penalty under Section 271(1)(c) of the Income Tax Act, 1961. The Hon'ble Apex Court in the case of Dilip N. Shroff reported in 291 ITR 519 (SC) have held that the burden of proof in penalty proceedings varies from that in assessment proceedings. A finding in the assessment proceedings that a particular receipt is income cannot automatically be adopted in penalty proceedings.

5.1 We have also examined the facts of the assessee's case in the light of the decision of the Hon'ble Apex Court in the case of Reliance Petroproducts reported in 322 ITR 158(SC) wherein their Lordships have defined the meaning of the phrase "furnishing of inaccurate particulars of income". Their Lordships of the Apex Court have held that if the details supplied by the assessee in the return of income are found to be incorrect, erroneous or false, then only it can be said that the assessee has furnished inaccurate particulars of income so as to make him liable for penalty under Section 271(1)(c) of the Act.

5.2 After considering the details furnished by the assessee, the copy of the income tax returns of the donors and the statements of the donors, we are of the opinion that the Assessing Officer has not pointed out any of the details furnished by the assessee to be incorrect, erroneous or false. The Assessing Officer has doubted the genuineness of the gifts on the ground of human probabilities. In our opinion, what is humanly probable is certainly a matter of opinion and, therefore, the denial of the acceptance of gifts in the assessment proceedings on the basis of human probability may be justified, but, the same cannot be the basis for the purpose of levying penalty under Section 271(1)(c), specially when there are overwhelming documentary evidences in support of the genuineness of the gifts which is further fortified by the statements of the donors. Therefore, we are of the considered opinion that the assessee cannot be said to have furnished inaccurate particulars of income or have concealed the income so as to make him liable for penalty under Section 271(1)(c) of the Act. While taking this view, we have relied upon the ratio of the legal propositions laid down by Hon'ble Apex Court in the case of Khoday Eswarsa and Sons (supra), Dilip N. Shroff (supra) and Reliance Petroproducts (supra). We have

examined the facts of the assessee's case in the light of the ratio laid down by the above three decisions of Hon'ble Apex Court. We are of the opinion that the learned CIT (A) was not justified in sustaining the penalty at 100% of the tax sought to be evaded. Accordingly, we set aside the order of the Ld. CIT (A) and direct the AO to delete the penalty.

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

The order is pronounced in the open court on 31st October, 2017.

Sd/-

**(G.D. AGRAWAL)
PRESIDENT**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 31st October, 2017
'GS'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order

ASSISTANT REGISTRAR