

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CHANDIGARH BENCHES 'B', CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &  
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**ITA Nos. 1387 to 1392/Chd/2016**  
Assessment Years: 2005-06 to 2011-12

Sh. Rajesh Popli,  
Hemant Lodge, Murray Field Estate,  
NavBahar, Shimla

Vs. The DCIT, CC-II,  
Chandigarh

PAN No. ABLPP3283G

(Appellant)

(Respondent)

Appellant By : Sh. Vishal Mohan, Adv.

Respondent By : Sh. Ashish Abrol, CIT DR

Date of hearing : 08.02.2018

Date of Pronouncement : 24.04.2018

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The above bunch of appeals has been preferred by the assessee against the different orders dated 29.06.2016 of the Commissioner of Income Tax (Appeals), [hereinafter referred to as CIT(A)]-3, Gurgaon for different assessment years agitating the levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. The brief facts relating to the issue involved are that in a search action carried out in the group concern of the assessee, the assessee admitted that he was indulged in unaccounted purchases and sales.

The Assessing officer made additions of different amounts on account of unexplained investment in purchases and at certain percentage of gross profit on account of unaccounted sales. The assessee agitated the aforesaid addition before the higher authorities. The matter travelled up to the level of the Tribunal. The Tribunal vide his order dated 11.7.2014 in ITA Nos. 77 to 81/Chd/2014 and in other appeals sustained the addition of Rs. 3 lacs on account of unexplained investment for initial assessment year 2005-06, however, deleted the addition on account of unaccounted investment in subsequent years observed that the same money might have been reinvested by the assessee in subsequent years. So far as the unaccounted sales were concerned, the Tribunal observed that the Assessing officer has been more than reasonable to assess the profit at the GP rate declared by the assessee in various years. In the meantime penalty, proceedings were also initiated against the assessee and penalty was levied by the Assessing officer in respect of the unexplained investment of Rs. 3 lacs for assessment year 2005-06 and also in respect of the additions confirmed by the Tribunal in respect of unaccounted sales for other assessment years.

3. Before us, Ld. Counsel for the assessee has submitted that the addition on account of gross profit was made on estimation basis. He has relied upon the decision of Hon'ble Punjab & Haryana High Court in the cases of 'Hari Gopal Singh Vs. CIT' (2002) 258 ITR 85 and of the Hon'ble Rajasthan High Court in 'CIT Vs. Krishi Type Retreading and Rubber Industries' (2014) 360 ITR 580 (Raj.) to submit that if the additions are made on estimation basis, it cannot be said that the

assessee had furnished inaccurate particulars of income or concealed his income; hence, no penalty was leviable.

4. The Ld. DR, on the other hand, relied upon the findings of the lower authorities.

5. We have considered the rival submissions. We find that it is not a simple case of additions on estimation basis. During the course of search action, the assessee himself had admitted that he was indulged in unaccounted purchases and unaccounted sales. The Tribunal has confirmed the additions on account of unexplained investment in the initial assessment year 2005-06 and has deleted the additions in this respect for the remaining years considering that the same amount might have been reinvested by the assessee. The assessee did not produce the source of the initial investment. So far as the additions on account of unexplained sales is concerned, a perusal of the assessment order reveals that the Assessing officer first calculated sales made outside the books of account and has made the addition in respect of the said sales at the same rate of profit at which the assessee had shown on the accounted for sales. The Assessing officer has made a scientific calculation and has been very much reasonable in arriving at the amounts of the additions liable to be made to the income of the assessee. It is not the case of the assessee that it was not indulged in unaccounted sales. Had the search action not been taken, the aforesaid unaccounted income of the assessee, would have escaped taxation. The facts on the file clearly prove that the assessee had not only furnished the inaccurate particulars of income but had also concealed his income. The proposition of law laid down by the

Hon'ble Supreme Court in the case of Mak Data( P) Ltd (2013) 388 ITR 593 (SC) is squarely applicable to the case of the assessee. We therefore, do not find any infirmity in the penalty levied by the Assessing officer on the assessee u/s 271(1)(c) of the Act. Since the facts and issues involved in all the aforesaid appeals are identical, hence, the penalty is confirmed on this issue in all the appeals.

6. The Ld. Counsel has submitted so far as the appeal for **assessment year 2010-11** is concerned, penalty is also levied on another issue in relation to the capital gains assessed. The assessee had claimed the cost of improvement at Rs. 3 lacs on the property sold. However, the Assessing officer noted that the assessee has failed to furnish any evidence regarding the incurring of expenditure on improvement of property, he therefore, did not allow the deduction of Rs. 3 lacs out of the capital gains on account of cost of improvement. The matter travelled upto the level of this Tribunal. This Tribunal considering the fact that the assessee had shown a sum of Rs. 1,60,000/- towards construction, further a sum of Rs. 44,333 towards transfer charges and Rs. 28,550/- for purchase of wood, observed that the assessee might have incurred some expenditure towards the cost of improvement which was estimated at Rs. 1 lakh. The Tribunal, therefore, restricted the addition on this issue at Rs. 2 lakhs. The Assessing officer levied one penalty u/s 271(1)(c) of the Act on this addition which was been further confirmed by the CIT(A). The Ld. counsel for the assessee before us, has submitted that the assessee had furnished the cash flow statement. That even the

Tribunal has also observed that the assessee had incurred some expenses towards cost of improvement.

7. The Ld. DR on the other hand, has submitted that the assessee had failed to furnish any evidence regarding the incurring of any expenditure on cost of improvement.

8. We have considered the rival contentions. We find that though the assessee had failed to fully prove his claim regarding the cost of improvement and, hence, the addition has been made to the income of the assessee. However, it does not seem to be a fit case for levy of penalty u/s 271(1)(c) of the Act on this issue. It is not established on file that the assessee had furnished inaccurate particulars of income or had concealed his income on this issue. The penalty levied on this issue, is therefore, ordered to be deleted.

10. In the result, the ITA Nos. 1387 to 1391/Chd/2016 for assessment years 2005-06 to 2009-10 are hereby dismissed whereas the ITA No.1392/Chd/2016 for assessment year 2010-11 are treated as partly allowed.

Order pronounced in the Open Court on 24.04.2018.

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Dated : 24 .04.2018

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*Copy to:*

1. *The Appellant*
2. *The Respondent*
3. *The CIT*
4. *The CIT(A)*
5. *The DR*

**Sd/-**  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**