



**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI, RAM LAL NEGI, JM**  
**ITA No.3624/Mum/2017**  
**(Assessment Year :2011-12)**

Shri Mustafa Abdulla Arodia Dilaram Estate S.V.Road, Goregaon (W) Mumbai – 400 062	Vs.	Pr. CIT-31, Mumbai
<b>PAN/GIR No.AACPA1141Q</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri Vimal Punmiya
Revenue by	Shri Santanu Kumar Saikia
<b>Date of Hearing</b>	<b>31/08/2018</b>
<b>Date of Pronouncement</b>	<b>31/08/2018</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the assessee against the order passed by CIT-31, Mumbai dated 24/03/2017 u/s.263 for the A.Y. 2011-12.

2. The grounds taken by the assessee reads as under:-

*1. The order passed under section 263 on 24,03.2017 for A.Y. 2011-12 by Ld. Pr. CIT is wholly illegal, unlawful and against the principles of natural justice. The impugned order of Revision is wholly illegal and without jurisdiction.*

*2. The Ld. Pr. CIT has not recorded satisfaction to initiate penalty by invoking revisions powers in quantum assessment proceedings and hence he doesn't have powers to levy the penalty under section 271(l)(c) of the Income Tax Act, 1961.*

*3. The Ld. Pr. CIT erred in levying the penalty on both the limbs of section 271(l)(c) of the Income Tax Act, 1961 while passing under section 263 of the Act which is bad in law.*

*4. The Ld. PCIT erred in levying and confirming penalty of Rs.4,11,313/- under section 271(l)(c) of the Income Tax Act on account of bonafide claim of the assessee which was withdrawn by the assessee during the*

*quantum assessment proceedings before the Ld. AO and taxes dues thereon were also been paid.*

3. Rival contentions have been heard and record perused. In the order passed u/s.263, the Principal CIT observed that AO has wrongly dropped the penalty proceedings u/s.271(1)(c) vide order dated 25/07/2014 despite categorical finding of concealment of particulars of income in the assessment order thereby rendering the order erroneous in so far as it was prejudicial to the interest of the Revenue in view of Clause (a) to Explanation -2 of Sub-section 1 of Section 263 of the Act. Accordingly, the order passed by the AO dropping the penalty proceedings u/s.271(1)(c) was set aside and penalty was levied. The precise observation of CIT was as under:-

*7. In the instant case, the assessee failed to offer the capital gains of Rs. 19,95,778/- against surrender of tenancy rights in his return of income nor could prove that the explanation was bona fide, therefore, I am satisfied that the assessee had not only furnished inaccurate particulars and thereby concealed the particulars of income as the capital gain income was not reported and Explanation I to section 271(l)(c) of the Act was applicable. The amount added in computing the total income of the assessee, for the purposes of clause (c) of sub-section (1) of section 271(1) is deemed to represent the income in respect of which particulars have been concealed. Thus, failure to invoke Explanation I to section 271(l)(c) and thereby not imposing penalty u/s 271(l)(c) has rendered the order dated 25.07.20.14 erroneous in so far as it is prejudicial to the interest of the revenue since the law applicable has not been applied. Penalty under section 271(l)(c) is now held to be a civil liability for the loss of revenue and mens rea is not an essential ingredient to invoke the provisions of section 271(l)(c) of the Act. The Act has been amended w.e.f. 01/6/2002 and has provided that apart from Assessing Officer and Commissioner (Appeals), the Commissioner is also empowered u/s 271(l)(c) of the Act to record satisfaction and initiate/levy of penalty. Thus, the view that if Commissioner is not empowered by Section 271(l)(c) of the Act to record satisfaction on his own, he cannot direct the Assessing Officer in this regard would no longer be relevant for the assessment year under consideration. Thus,*

*the order u/s 271(l)(c) of the Act is hereby modified and in view of sub-section (1) of section 263 enabling the undersigned to pass such order as the circumstances of the case justify. I am satisfied that the assessee had not only furnished inaccurate particulars and thereby concealed the particulars of his income but has also not filed satisfactory explanation now so as to justify that Explanation 1 to section 271(l)(c) of the Act is not applicable. However, considering the facts and circumstances of the case, minimum penalty on the basis of the tax sought to be evaded is hereby imposed u/s 271(l)(c) of the IT. Act, 1961. The Assessing Officer is directed to compute the tax sought to be evaded and the minimum penalty imposable (which has been worked out at Rs.41,11,131/- ) and issue the necessary notice of demand and challans after working out the quantum of penalty.*

4. We have gone through the orders of the authorities below and found that addition was made by the AO on account of long term capital gain. Such additional income in the form of long term capital gain was accepted by the assessee and taxes there on was paid. Thereafter AO also initiated penalty proceedings u/s.271(1)(c) for concealment of particulars of income. Thereafter, AO passed order dated 25/07/2014 wherein penalty so initiated was dropped. Thereafter, CIT invoked his power u/s.263 and held that AO was not justified in dropping the penalty, accordingly, order so passed by AO was held to be erroneous as well as prejudicial to the interest of revenue.

5. It was contended by learned AR that addition was not made by the Pr. CIT. Hence, in view of the amended provisions of Sec.271(1)(c) the levy of penalty by the CIT by invoking Powers u/s. 263 is in excess of his jurisdiction.

6. As per learned AR under the amended provisions of section 271(1)(c) of the Act, after 01.06.2002, the Ld. PCIT can levy the penalty

only for those issues which was decided by him. Meaning thereby until and unless Ld. PCIT himself gets satisfied during the invocation of powers u/s. 263 for quantum assessment proceedings, he cannot pass an order under section 263 r.w.s. 271(l)(c) of the Act. He further contended that even though the order was not passed specifically u/s. 263 r.w.s. 271(l)(c), the concrete nature of the order was same only. Reason being, at page no. 14 / para 7, rather than directing the AO to levy the penalty he himself reached at conclusion that the penalty required to be levied and accordingly penalty of Rs.4,11,313/- was levied on the assessee.

7. With regard to the merit of CIT's action for levying penalty u/s. 271(1)(c), it was submitted that in the case of assessee, quantum assessment proceedings, the wrong claim of section 54F was admitted by the assessee due to inadvertent mistake of the accountant in filing return of income and addition was made by the AO. The Ld. PCIT has not invoked any powers for said proceedings and directly levied the penalty u/s. 271(l)(c) is illegal and against the provisions of the section. Reason being PCIT has not recorded any satisfaction in the course of quantum proceedings.

8. For the above proposition, reliance was placed on the following judicial pronouncements.

**Shri Raikumar Jain vs. ACIT In ITA No.575/Hyd/2012 - For A.Y.2004-05 -Order dated 07.09.2012 - Hyderabad Tribunal Identical Facts of the case:**

*This appeal by the assessee is directed against the order of the CIT-IV, Hyderabad passed u/s. 263 of the Act dated 29.3.2012.*

*2. The grievance of the assessee in this appeal is with regard to assumption of jurisdiction by the CIT u/s. 263 of the Income- tax Act,*

*1961 and thereby holding that dropping of penalty proceedings u/s. 271(1)(c) of the Act is erroneous and prejudicial to the interest of revenue.*

*17. Further it was held by the Gujarat High Court in the case of CIT vs. Parmanand M. Patel (278 ITR 3) that the CIT is not empowered to record satisfaction by invoking s. 271(1)(c) of the Act and if he is not entitled to do so, on his own, he cannot do it by directing the assessing authority. The Court observed that in other words, what the CIT himself cannot do, he cannot get it done through the assessing authority by exercising revisional powers. In view of the above discussion, the direction of the CIT to AO to levy penalty u/s 271(1)(c) of the Act is vacated*

*18. In the result, appeal of the assessee is allowed.*

9. As per learned AR while passing order u/s.263, as the Ld. PCIT levied penalty u/s.271(1) of the Act on both the limbs of section, said order is required to be quashed.

10. On the other hand, it was argued by learned CIT DR that cases relied on by learned AR are distinguishable on facts. He also invited our attention to the judicial pronouncements relied on by CIT in his order u/s.263, to justify that he has correctly exercised his power u/s.263 for holding that the order passed by AO dropping the penalty was erroneous as well as prejudicial to the interest of revenue.

11. Rival contentions have been heard and record perused.

12. So far as invocation of powers u/s.263 is concerned, we found that CIT(A) has correctly exercised his power in so far as the order passed by AO was erroneous and prejudicial to the interest of Revenue dropping the penalty in respect of income received by assessee on surrender of the rights but not disclosed in the return of income. On merits we found that during the year under consideration, assessee received compensation

from the land lords amounting to Rs.13,68,000/- for vacating the rented place and compensation for surrender of tenancy rights from M/s. Mega Enterprises amounting to Rs.6,27,778/-.

13. Out of the total amount of Rs.19,95,778/- received on sale of tenancy rights, the assessee has invested Rs.7,44,253/- for purchase of immovable property and claimed exemption u/s.54F. However, the claim u/s.54F was declined. Mere decline of claim made in the return of income will not warrant any imposition of penalty in terms of the decision of Hon'ble Supreme Court in case of Reliance Petro Products Pvt. Ltd., Accordingly, we do not find any justification for levy of penalty with respect to amount of Rs.7,44,253/- alleged to be invested for purchase of immovable property. So far as, balance of payment is concerned, AO is directed to verify the facts from record and decide the issue of levy of penalty u/s.271(1)(c) of the IT Act. We direct accordingly.

**14. In the result, appeal of the assessee is allowed in part.**

Order pronounced in the open court on this      31/08/2018

**Sd/-**  
**(RAM LAL NEGI)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated      31/08/2018

Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
ITAT, Mumbai