

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
and  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.2898/Del./2013  
(ASSESSMENT YEAR : 2009-10)**

**ITA No.2973/Del./2015  
(ASSESSMENT YEAR : 2009-10)**

Shri Satyendra Nath Kukreja, vs. ITO, Ward 32 (1),  
23, Sunder Nagar, New Delhi.  
New Delhi – 110 003.

**(PAN : AFVPK4378R)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri V.K. Bindal, Ms. Sweety Kothari &  
Ms. Rinky Sharma, Advocates  
REVENUE BY : Shri V.K. Jiwani, Senior DR

Date of Hearing : 19.09.2018

Date of Order : 03.10.2018

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Since both the aforesaid appeals, one quantum appeal and another penalty appeal, have emanated from one assessment order, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The appellant, Shri Satyendra Nath Kukreja (hereinafter referred to as 'the assessee') by filing the present appeal (ITA

No.2898/Del/2013), sought to set aside the impugned order dated 25.02.2013 passed by Ld. CIT (Appeals)-XXVI, New Delhi qua the assessment year 2009-10 on the grounds inter alia that:-

***“1. That the order of Commissioner (Appeals) is contrary to law and the facts of the case.***

***2. That the Commissioner (Appeals) erred in holding the sum of Rs.113,03,320/- as income without consideration as per the provision of section 56(2)(vii)(a) of the Income Tax Act, 1961.***

***3. That the Commissioner (Appeals) erred in not holding the sum of Rs.1,13,03,320/- as any sum of money or any property received In contemplation of death of payer or donor.***

***4. Without prejudice to the foregoing, the Commissioner (Appeals) failed to recognize the letter written by the de ceased nominating the assessee and consequent letters of Milton Keynes Council on distribution of assets to the assessee.***

***5. Without prejudice to the foregoing, he Commissioner (Appeals) erred in ignoring the documents submitted, holding that there is no element of personal intimacy between the assessee and payer and that the money has not been given to the assessee on will or on contemplation of death.***

***6. Without prejudice to the foregoing, the Commissioner (Appeals) erred in ignoring the fact that 2/3rd of the sum of Rs.1,13,03,320/- was distributed to other two brothers as per the will of late Shri T.C. Bhardwaj and continued to make an addition of the entire Rs.1,13,03,320/- in the income of the assessee.***

***7. That on the facts and circumstances of the case and in law, the Assessing officer erred in initiating the penalty proceedings u/s 271 (1)(c) of the Income Tax Act, 1961.”***

3. The appellant, Shri Satyendra Nath Kukreja (hereinafter referred to as 'the assessee') by filing the present appeal (ITA No.2973/Del/2015), sought to set aside the impugned order dated 26.02.2015 passed by Ld. CIT (Appeals)-18, New Delhi affirming the penalty order dated 26.09.2013 passed u/s 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'), qua the assessment year 2009-10 on the grounds inter alia that :-

*“1.0 The learned Commissioner of Income-tax (Appeals) has erred, on the facts of the case and in law, in upholding the order of the Assessing Officer levying the penalty under section 271 (1)(c) of the Act, without considering the submissions of the appellant.*

*1.1 The Commissioner of Income-tax (Appeals) has erred, on the facts of the case and in law, in confirming the penalty of Rs.36,60,000 levied on the appellant under section 271 (1)(c) of the Act.*

*1.2 The Commissioner of Income tax (Appeals) has erred, on the facts of the case and in law, in dismissing the appeal alleging that the appellant furnished inaccurate particulars as the source of deposits in the bank are not proved.*

*1.3 On the facts of the case and in law, the order of the Commissioner of Income tax (Appeals) is contrary to the principles of natural justice.”*

#### **ITA No.2973/Del/2015**

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : the assessee filed return of income on 23.07.2009 declaring income at Rs.5,58,225/- which was put under scrutiny. It was gathered by AO that the assessee has made

investment in mutual fund and shares amounting to Rs.64,15,000/- and on query, assessee filed copy of bank account of Standard Chartered Bank containing the fact that the investment was made through banking channel. AO noticed that the assessee has received an amount of Rs.1,13,03,320/- from late Shri Tek Chand Bhardwaj, allegedly his childhood friend like brother after his death, from United Kingdom (UK) and claimed the same as non-taxable income under the head "Income from other sources". Declining the contentions raised by the assessee, AO proceeded to conclude that the assessee has used a colouring device to avoid payment of income-tax and the assessee has failed to prove any personal intimacy with the payer and treated the same as income without any consideration and thereby added the same to the total income of the assessee which is assessed at Rs.1,19,09,045/-.

5. Assessee carried the matter before the Id. CIT (A) by way of filing an appeal who has partly allowed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. Undisputedly, the amount of Rs.1,13,03,320/- (GBP 158000) was credited in the assessee's account on 15.12.2008 pursuant to the cheque dated 13.11.2008 issued by Milton Keynes Council and another cheque of GBP 640 was also sent by Milton Keynes Council to the assessee on behalf of one Shri Tek Chand Bhardwaj. It is also not in dispute that Shri Tek Chand Bhardwaj who was Person of Indian Origin (PIO) as a citizen of UK, expired on 11.10.2008 at the age of 87 years.

8. In the backdrop of the aforesaid undisputed facts, arguments addressed by the ld. Authorized Representatives of the parties to the appeal, documents relied upon and orders passed by the lower Revenue Authorities, the sole question arises for determination in this case is :-

*“as to whether AO/CIT (A) have erred in treating the amount of Rs.1,13,03,320/- (GBP 158000) received vide cheque dated 13.11.2008 on the basis of some nomination letter allegedly filed by Tek Chand Bhardwaj with Manager, Halifon Plc., Milton Keynes, UK regarding Saving Account No.D/37707619-9 as income of the assessee from other sources?”*

9. Ld. AR for the assessee challenging the impugned order passed by ld. CIT (A) contended that since the assessee has received the amount in question as a nominee of Shri Tek Chand Bhardwaj after his death being a childhood friend, the same is not liable to be taxed; that AO as well as CIT (A) have wrongly treated the amount as income without consideration u/s 56(2)(vii)(a) of the

Act which pertains to immovable property only; that the assessee's case is covered u/s 56(2)(vi) of the Act.

10. However, on the other hand, to repel the arguments addressed by the ld. AR for the assessee, the ld. DR for the Revenue contended that nomination letter relied upon by the assessee is a colourable device used by the assessee to evade the payment of tax; that there is a collusion between assessee and the council to transfer the huge amount; that no evidence whatsoever has been brought on record by the assessee if he has any relation with Shri Tek Chand Bhardwaj or he was the beneficiary of the amount in question by way of any "Will".

11. Bare perusal of the nomination letter, copy of which is available at page 4 of the paper book Vol.I, shows that the same is undated, initially purported to be written in favour of Shri R.N. Kukreja and Shri S. Kukreja by recording their driving licence number but subsequently the name of assessee has been entered without his driving licence number or passport number etc. Even word "both" has been struck off and over-written with word "all", and these circumstances show that the nomination is shrouded by suspicious circumstances.

12. Moreover alleged nomination is a vague and ambiguous document and does not inspire any confidence to believe it. It does

not disclose as to when it was executed by Shri Tek Chand Bhardwaj. Furthermore, Shri Tek Chand Bhardwaj was admittedly a retired civil servant and he would have executed a Will in favour of the assessee bequeathing his movable assets in favour of the assessee, if he so desired. Assessee has also not brought on record even in iota of evidence in the form of some photographs while attending the family functions etc. to prove his affinity or closeness with Shri Tek Chand Bhardwaj nor he has proved that he has ever visited him in UK. Assessee has based his entire case on the undated nomination letter otherwise required to be executed in prescribed proforma in all probability and apparently appears to be a colouring device to extract the undue benefit in collusion with Milton Keynes Council.

13. Assessee has also not produced any correspondence by way of text messages or letters between him and Shri Tek Chand Bhardwaj to prove his childhood friendship rather based his entire case on alleged nomination letter. Ld. CIT (A) has rightly observed that Milton Keynes Council has recorded in the letter issued to the assessee that they being next kin of Shri Tek Chand Bhardwaj have been nominated to receive his movable assets and to prove the fact that the assessee's next kin has not brought on record any evidence if he has close relative by way of blood or

marriage of Shri Tek Chand Bhardwaj. Entire exercise as to transfer of the amount in question by Milton Keynes Council to the assessee is based upon bald document which has not been supported with any evidence either by the Milton Keynes Council or by the assessee to prove his close relations with Shri Tek Chand Bhardwaj. So, in the given circumstances, we are of the considered view that AO as well as Id. CIT (A) have rightly treated the amount in question as income of the assessee without consideration. Hence, question framed is determined against the assessee. So, finding no illegality or perversity in the impugned order, present appeal being ITA No.2898/Del/2013 filed by the assessee is dismissed.

**ITA NO.2973/DEL/2015**

14. On the basis of completed assessment u/s 143 (3), penalty proceedings have been initiated against the assessee u/s 271(1)(c) for furnishing of inaccurate particulars of income resulting in concealment of income to which the assessee has not filed any reply. AO, by relying upon the assessment order affirmed by the Id. CIT (A), proceeded to conclude that the assessee has furnished inaccurate particulars of income deliberately and willfully resulting in concealment of income and due taxes thereon and thereby levied the penalty of Rs.36,60,000/- u/s 271(1)(c) of the Act.

15. Assessee carried the matter before the Id. CIT (A) by way of filing an appeal who has confirmed the penalty by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

16. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

17. Undisputedly, addition made by AO to the tune of Rs.1,13,03,320/- on account of income without any consideration has been confirmed. It is also not in dispute that the assessee has not contested the penalty proceedings before AO. In the backdrop of the aforesaid facts and circumstances of the case, arguments addressed by the Id. ARs of the parties and documents relied upon, the sole question arises for determination in this case is :-

***“as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income during assessment proceedings while interpreting the provisions contained u/s 271(1)(c) of the Act?”***

18. The Id. AR for the assessee challenging the penalty order contended inter alia that show-cause notice issued by the AO u/s 274, available at page 35 of the paper book is not a valid notice to

initiate the penalty proceedings as the assessee company has not been made aware if it has concealed the particulars of income or has furnished inaccurate particulars of such income and relied upon the decision rendered by the Hon'ble Karnataka High Court in case of *CIT vs. Manjunatha Cotton and Ginning Factory & Ors.* 359 ITR 565 (Karn); that even at the time of passing the assessment order, the AO has failed to specify himself if the assessee has concealed the particulars of income or had furnished inaccurate particulars of income rather barely stated that "*penalty proceedings u/s 271(1)(c) of the Act is initiated separately*"; that even at the time of levying the penalty, the AO was not categoric enough if he is levying the penalty for concealment of particulars of income or for furnishing of inaccurate particulars of such income.

19. However, Id. DR for the Revenue to repel the arguments addressed by the Id. AR for the assessee company contended inter alia that the notice issued by the AO u/s 274 of the Act is not standalone document which is based on assessment order; that the notice has been issued in respect of furnishing inaccurate particulars of income and relied upon the case of *Trimurti Engineering Works – 25 taxmann.com 363*.

20. To proceed further, we would like to reproduce notice issued u/s 271(1)(c) of the Act for ready perusal :-

**“NOTICE UNDER SECTION 274 READ WITH SECTION  
271 OF THE INCOME TAX ACT, 1961**

*Income Tax Office,  
New Delhi  
Dated : 28.1.2014*

**To**

*Shri Satendra Nath Kukreja,  
23, Sunder Nagar,  
New Delhi-110 003.*

*Whereas in the course of proceedings before me for  
the assessment year 2009-10 it appears to me that you:-*

*Have without reasonable cause failed to comply with  
a notice under section 142 (1)/143(2) of the Income Tax Act,  
1961 dated.....*

*Have concealed the particulars of your income or  
furnished inaccurate particulars of such income in terms of  
explanation 1,2,3,4 and 5*

*You are hereby requested to appear before me at  
11.30 AM/PM on 16.01.2012 and show cause why an order  
imposing a penalty on you should not be made under  
section 271 of the Income Tax Act, 1961. If you do not wish  
to avail yourself of this opportunity of being heard in person  
or through authorized representative you may show cause in  
writing on or before the said date which will be considered  
before any such order is made under section 271(1)(c).*

*Sd/-  
Assessing Officer  
Income Tax Officer,  
Ward 32 (1), Room No.332-B,  
C.R. Building, New Delhi.”*

21. Undisputedly, additions made against the assessee during quantum proceedings have already been confirmed. It is settled principle of law that the penalty cannot be imposed merely on the ground that additions made in the income of the assessee has been

confirmed rather to proceed with imposition of penalty u/s 271(1)(c), the AO has to prove that there was concealment of particulars of income or assessee has furnished inaccurate particulars of such income.

22. Bare perusal of the notice issued to the assessee u/s 271(1)(c) of the Act reproduced above goes to prove that assessee has not been called upon to explain if he has concealed the particulars of income or furnished inaccurate particulars of such income rather a tick has been marked against both the charges mentioned in the printed proforma. Hon'ble Karnataka High Court in case of *CIT vs. Manjunatha Cotton and Ginning Factory & Ors.* (supra) dealt with the identical issue threadbare and came to the following conclusion :-

***“63. In the light of what is stated above, what emerges is as under:***

- a) Penalty under Section 271(1)(c) is a civil liability.***
- b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.***
- c) Willful concealment is not an essential ingredient for attracting civil liability.***
- d) Existence of conditions stipulated in Section 271(1)(c) is a sine qua non for initiation of penalty proceedings under Section 271.***
- e) The existence of such conditions should be discernible from the Assessment Order or order of the Appellate Authority or Revisional Authority.***

*f) Ever if there is no specific finding regarding the existence of the conditions mentioned in Section 271(1)(c), at least the facts set out in Explanation 1(A) & (B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.*

*g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(1)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1(B).*

*h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Appeals and the Commissioner.*

*i) The imposition of penalty is not automatic.*

*j) Imposition of penalty even if the tax liability is admitted is not automatic.*

*k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the assessing officer in the assessment order.*

*l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bonafide, an order imposing penalty could be passed.*

*m) If the explanation offered, even though not substantiated by the assessee, but is found to be bonafide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.*

*n) The direction referred to in Explanation IB to Section 271 of the Act should be clear and without any ambiguity.*

*o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the Assessing Authority.*

*p) Notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income*

*q) Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law.*

*r) The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.*

*s) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.*

*t) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.*

*u) The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared as invalid in the penalty proceedings.”*

23. So, following the law laid down by Hon’ble High Court affirmed by Hon’ble Supreme Court, we are of the considered view

that when the assessee has not been specifically made aware of the charges leveled against him as to whether there is a concealment of income or furnishing of inaccurate particulars of income on his part, the penalty u/s 271(1)(c) of the Act is not sustainable. The case law relied upon by the Id. DR are not applicable to the facts and circumstances of this case in the face of the decisions rendered by the Hon'ble High Court in *Manjunatha Cotton and Ginning Factory & Ors.* (supra).

24. Furthermore, even the penalty order has been passed in this case in a mechanical manner which is totally based upon the assessment order, the operative part of which is extracted for ready perusal as under :

***“In view of the above mentioned facts and decided case law it is crystal clear that assessee has furnished inaccurate particulars of income deliberately and willfully resulting in concealment of income and due taxes thereon. I am satisfied that it is fit case for levy of penalty u/s 271(1)(c) of the Income Tax Act, 1961. The maximum penalty works out to be RS.1,09,36,847/- @ 300% of the tax sought to be evaded and minimum penalty works out to Rs.36,58,949/- @ 100% of the tax sought to be evaded. Accordingly, I levy penalty of Rs.36,60,000/- u/s 271(1)(c) f the Income Tax Act, 1961. Issue demand notice u/s 156 of the Income Tax Act, ITNS-150 and challan.”***

25. Operative part of the penalty order shows that even at the time of levying the penalty, the AO was not categorical enough if the assessee has furnished inaccurate particulars of income or has

concealed particulars of income. Even Id. CIT (A) in the impugned order has not preferred to clarify while confirming the penalty order (if the assessee has furnished inaccurate particulars or has concealed particulars of such income) rather upheld the penalty order passed by the AO in mechanical manner.

26. In view of what has been discussed above, we are of the considered view that AO/CIT (A) have erred in levying/confirming the penalty of Rs.36,60,000/- which is not sustainable in the eyes of law, hence ordered to be deleted. Consequently, the appeal (ITA No.2973/Del/2015) filed by the assessee is hereby allowed.

27. Resultantly, ITA No.2898/Del/2013 filed by the assessee is dismissed and ITA No.2973/Del/2015 is hereby allowed.

**Order pronounced in open court on this 3<sup>rd</sup> day of October, 2018.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 3<sup>rd</sup> day of October, 2018  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**