

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC ": NEW DELHI  
BEFORE, SHRI AMIT SHUKLA JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

SP NO 540/D/2018  
ITA No. 5062/Del/2015  
(Assessment Year: 2015-16)

J K Cooperative Group Housing Society Plot No GH 29 Sector 56 Gurugram -1 PAN AAATJ5649F		ITO Ward 2 (2) Gurugram
(Appellant)		(Respondent)

Assessee by :	None
Revenue by:	Shri Pradeep Singh Gautam Sr Dr
Date of Hearing	24/08/2018
Date of pronouncement	13/11/2018

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by JK cooperative group Housing Society Ltd, assessee, against the order of the Commissioner of income tax (appeals) – 1, Gurugram wherein the penalty under section 271 (1) ( C ) of ₹ 4 84410/- levied by the income tax officer, Ward – 2 (2), gurugram is confirmed by order dated 31/5/2018.
2. The solitary issue is challenged to that order confirming the penalty stating that there is no concealment of income and the learned assessing officer in the notice under section 274 read with section 271 (1) © did not specify any of the twin charges and therefore the penalty itself is wrongly initiated.
3. Despite notice, none appeared on behalf of the assessee and therefore the issue is decided on the merits of the case as per information available on the record.

4. The learned departmental representative vehemently supported the orders of the lower authority.
5. We have carefully considered the rival contention and perused the orders of the lower authorities. The facts show that the assessee is a cooperative Housing Society who filed its return of income declaring nil income on 2/9/2015. The assessee is a house-incorporated society, which is running by its members. The assessment under section 143 (3) of the income tax act, 1961 was passed on 16/6/2017 where the addition of ₹ 1 577665/- was made on account of rent from mobile towers not shown by the assessee of ₹ 1 513102/- and addition on account of bank interest of ₹ 6 4563/-. The learned assessing officer stated in the order that he satisfied that the assessee has concealed the income and furnished inaccurate particulars of its income to that extent. According to the penalty proceedings were initiated under section 271 (1) (C) of the act. The additions were not challenged by the assessee before the higher forum. The learned assessing officer issued the notice. The assessee replied on 8/8/2017 submitting that all these incomes have been taken in the income and expenditure account and disclosed in the books of accounts. No income has been concealed and it is taxable due to the Supreme Court decision of Bangalore club and the management of the society has surrendered both these income of ₹ 1512102/- on rental income and ₹ 6 4563/- on interest income from the bank on the condition that no penalty will be levied under the income tax act, 1961 because the surrender is made with a view to buy peace or avoid harassment or litigation. The learned assessing officer rejected the explanation of the assessee and was of the view that assessee has surrendered the above said income during the course of assessment proceedings and such income is income from commercial activities is held by the honourable Supreme Court in the case of Bangalore club versus CIT (2013) 350 ITR 509 (SC) which come up in the year 2013. Therefore the assessee society has furnished inaccurate particulars of income deliberately and therefore the assessee is liable for penalty under section 271 (1) (C) of the act. Accordingly the

penalty of ₹ 3 33098 was imposed. However the learned assessing officer levied the penalty of Rs. 484410/- .

6. The assessee challenged the same before the learned commissioner of income tax appeals who held that the decision of the honourable Supreme Court in case of Bangalore club (supra) was pronounced on 14/1/2013 and the return of income of the assessee was filed by the appellant after 2 and half years from that decision. The honourable Supreme Court had finally settled the issue whether the interest received unfixed deposit receipt is covered by the principle of mutuality or not. Therefore such issue is no more debatable and has attained finality the learned commissioner appeals also held that appellant had taken a chance to file inaccurate particulars of income knowing that only a small percentage of cases are taken up for scrutiny. Therefore, he confirmed the penalty. On careful perusal of the order of the learned assessing officer of assessment under section 143 (3) of the act the learned assessing officer was satisfied that the assessee has concealed the income and furnished inaccurate particulars of income. Therefore, in the assessment order itself the satisfaction recorded by the assessing officer was not clear. In the penalty order, the learned assessing officer has levied the penalty for furnishing of inaccurate particulars of income. The learned commissioner appeals have also confirmed the penalty on that charge only. However, from the assessment order it is clear that the learned AO was not sure at the time of making the addition that whether the assessee has committed a default of concealing the income or furnishing of the inaccurate particulars of income. It is now an established law that assessee should be made aware of the charges against him before the levy of the penalty. In this case, the learned AO did not specify one of the twin charges. In such cases the issue squarely covered in favour of the assessee by the decision of the honourable Karnataka High Court in case of *CIT v. SSA'S Emerald Meadows* [\[2016\] 73 taxmann.com 241 \(Kar.\)](#) . Accordingly we reverse the finding of the lower authorities and direct the learned assessing officer to cancel the penalty levied under section 271(1) ( C) of the act of ₹ 4 84410/-.

7. In the result, appeal filed by the assessee is allowed.
8. In view of a decision in the appeal of the assessee, this stay petition filed by the assessee in SA number 540/Del/2018 is dismissed as infructuous.
9. Order pronounced in the open court on 13/11/2018.

Sd/-  
( AMIT SHUKLA)  
JUDICIAL MEMBER

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated:13/11/2018  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating member	
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	14.11.2018
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	