

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH ‘B’, CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य  
BEFORE: SHRI SANJAY GARG, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ ITA No.65/Chd/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Sh.Prince Sharma, Plot No.6, Transport Area, Sector 26, Chandigarh	बनाम	The A.C.I.T., Circle 5(1), Chandigarh.
स्थायी लेखा सं./PAN NO: BEZPS9617H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Anil Batra, Adv.

राजस्व की ओर से/ Revenue by : Ms/ Geetinder Mann, Sr.DR

सुनवाई की तारीख/Date of Hearing : 13.11.2018

उद्घोषणा की तारीख/Date of Pronouncement: . 26.11.2018

**आदेश/Order**

**PER ANNAPURNA GUPTA, AM:**

The present appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Chandigarh (in short CIT(A) dated 29.11.2017 passed u/s 250 (6) of the Income Tax Act, 1961 (in short referred to as ‘Act’), confirming the levy of penalty u/s 271(1)(c) of the Act.

2. At the outset it was pointed out to us from the order of the authorities below that the penalty was levied on account of the following additions made:

- 1) Addition on account of notional rent u/s 23(1) of the Act = Rs.1,93,200/-

2) Addition on account of un-  
disclosed interest = Rs.23,168/-

3. Taking us through the assessment order passed in the present case u/s 143(3) of the Act, the Ld. counsel for assessee pointed out that the addition made on account of notional rent was on account of the fact that the assessee had shown himself to be the owner of four properties, out of which one was shown as self occupied and one was shown as house under construction. The other two, the assessee had claimed as being occupied by his mother as her residence and the other was being used by his staff for residence. It was pointed out from the assessment order that this explanation of the assessee was disbelieved since the assessee had stated before the A.O. that in the impugned financial year the assessee was residing alongwith his mother and wife. The A.O., therefore, treated only one house as self occupied and computed the annual value of the other two houses, as per section 23(1) of the Act, at Rs.1,93,200/- and added the same to the income of the assessee. Vis-à-vis the interest income earned, the Ld. counsel for assessee pointed out that during assessment proceedings the A.O. found from his own internal system that the assessee had not acknowledged the interest income earned from HDFC bank amounting to Rs.23,168/-, on which TDS had also been deducted. The addition of the same was made to the income of the assessee. It was contended that penalty proceedings were also initiated on the aforesaid additions. Thereafter it was pointed out that during penalty proceedings the

assessee contended that non inclusion of the said incomes was an inadvertent mistake and bonafide as the assessee himself had provided the information, but the A.O. rejected the explanation of the assessee and levied penalty for concealing the said incomes, amounting to Rs.20,505/-.The same, it was pointed out, was confirmed by the CIT(A).

6. Before us, the Ld. counsel for assessee vehemently contested the penalty levied on the said two counts. Ld.Counsel for the assessee contended that the rental income added to the income of the assessee was notional interest only and admittedly no rental income had actually been earned by the assessee. It was contended that all particulars relating to the properties owned by the assessee had been disclosed and the addition being only of notional income earned, no penalty was leviable on the same. Reliance was placed on the decision of the I.T.A.T. Pune Bench in the case of Kamalakar Manohar Haval Vs. ITO in ITA No Nos.1170 to 1173/Pune/2010 dated 30.12.2011 and it was pointed out that the I.T.A.T. in the said decision had deleted levy of penalty on rent, stating that all particulars having been disclosed by the assessee relating to the properties owned by it and no rent actually having been earned and the addition being merely of notional rent, no penalty u/s 271(1)(c) of the Act was leviable. Copy of the order was placed before us. Further the Ld. counsel for assessee contended that even otherwise it had claimed one of the houses to be occupied by his mother and other by his

staff and that this explanation of the assessee was rejected for want of evidence but was not found to be false by the authorities below and, therefore, also no penalty was leviable. It was further contended that the assessee had returned an income of Rs.1.26 crores to tax, having paid tax of an amount of Rs.36 lacs on the same and had surrendered the said income on account of notional rent and interest income when it came to his knowledge that the same income had not been returned to tax and, therefore, bonafide of the assessee in the back drop of this fact cannot be doubted and no penalty was leviable on the same.

7. The Ld. DR, on the other hand, relied upon the order of the lower authorities stating that the assessee had failed to give plausible explanation for not returning rental income and interest income and, therefore, penalty had been rightly levied on the same.

8. We have heard the rival contentions, perused the orders of authorities below and also gone through the case laws referred to us. We are in agreement with the contention of the Ld. counsel for assessee that it is not a fit case for levy of penalty u/s 271(1)©, on account of concealing/furnishing inaccurate particulars of income. Admittedly the assessee had disclosed all particulars of properties owned by it. Also it is not that the assessee was found to have concealed rent actually earned from the said properties. On the contrary the addition has been made of notional rent as per the provisions of section 23(1) of the

Act. In such circumstances, we hold, the assessee cannot be charged with having concealed any particulars of income so as to attract levy of penalty u/s 271(1)(c) of the Act. The reliance placed by the Ld.Counsel for the assessee on the decision of the Pune Bench of the ITAT in the case of Kamalakar Manohar Haval (supra) is apt wherein the ITAT deleted identical penalty levied holding that the addition made on account of rent was only an estimate and a notional income only and the assessee having disclosed all particulars relating to the properties owned by him and having not actually earned any income therefore, he cannot be held to have concealed any particulars of income so as to attract levy of penalty u/s 271(1)© of the Act. Moreover, admittedly the assessee had returned income of Rs.1.26 crores and had paid tax & interest amounting to Rs.36 lacs on the same. In the backdrop of these facts, we agree with the Ld.Counsel for the assessee, that the non disclosure of notional rent and bank interest amounting in all to a meagre sum of Rs.66,368/- (Rs.43,200/- + Rs.23,168/-), was an inadvertent mistake and by no count the bonafides of the assessee could be doubted, more particularly when the assessee surrendered the same on being confronted during assessment proceedings.

9. In view of the above, we hold that the assessee could not be charged with having concealed/furnished any inaccurate particulars of income relating to notional rent and bank interest, and therefore no penalty u/s 271(1)© was

leviable. The penalty so levied of Rs.20,505/- is directed to be deleted.

10. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the Open Court.

Sd/-  
संजय गर्ग  
(SANJAY GARG )  
न्यायकि सदस्य/ Judicial Member  
दिनांक /Dated:26<sup>th</sup> November, 2018  
\*रती\*

Sd/-  
अन्नपूर्णा गुप्ता  
(ANNAPURNA GUPTA)  
लेखा सदस्य/ Accountant Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar