

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

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1179/Del./2014
(ASSESSMENT YEAR : 2009-10)**

Smt. Surinder Kaur Sahni, vs. ITO, Ward 32 (1),
C – 21, Friends Colony East, New Delhi.
New Delhi – 110 065.

(PAN : AAYPS9540H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.K. Mehra, CA
REVENUE BY : Shri Shailesh Kumar, Senior DR

Date of Hearing : 13.12.2018

Date of Order : 19.12.2018

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Smt. Surinder Kaur Sahni (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 12.12.2013 passed by Ld. CIT (Appeals)-XXVI, New Delhi qua the Assessment Year 2009-10 confirming the penalty levied u/s 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') on the grounds inter alia that :-

“1) The levy of penalty u/s 271(1)(c) is unjustified and illegal under the facts and circumstances of the case.

2) The AO has erred in imposing a penalty of Rs.2,13,07,291/- in as much as the claim of exemption u/s 54 of the Act was bona fide. The provisions of section 271(1)(c) of the Act were not attracted, as there was neither any concealment of income nor it was a case of furnishing inaccurate particulars.

3) The penalty proceedings are independent and the AO was bound to consider the claim of the assessee on facts afresh as claimed.

4) The claim of exemption was admissible as all the conditions laid in the section were satisfied, the assessee had made investment in construction of a residential unit, a villa which was to be completed within three years and as such the claim had been wrongly denied in the assessment. No penalty was leviable under the facts and the circumstances of the case. The penalty is liable to be quashed.

RELIEF CLAIMED

- A) The imposed under section 271(1)(c) be deleted.*
- B) Any other relief to which the assessee is entitled be allowed.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of completed assessment under section 143 (3) of the Act vide which Assessing Officer made disallowance of Rs.2,13,07,291/- claimed by the assessee u/s 54 of the Act on the ground that the assessee has failed to fulfill the condition lay down u/s 54 and thereby disallowed the amount of Rs.2,13,07,291/- and sought to initiate penalty proceedings u/s 271(1)(c) of the Act read with section 274 of the Act.

3. During the penalty proceedings, after declining the contentions raised by the assessee, AO proceeded to levy the penalty of Rs.48,26,102/- @ 100% on the tax evaded.

4. Assessee carried the matter by way of an appeal before the Id. CIT (A) 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.

5. 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.

6. Undisputedly, the assessee has sold her immovable property at New Friends Colony, New Delhi for a consideration of Rs.2,75,00,000/- and has computed the long term capital gain of Rs.2,13,07,291/- after deducting the indexed cost of acquisition. It is also not in dispute that subsequently on failure of the builder to deliver the possession of the property purchased, the assessee has surrendered an amount of Rs.2,13,07,291/- claimed as exempted on account of capital gain to buy peace and to avoid further litigation with the Department subject to the condition, penalty proceedings u/s 271(1)(c) of the Act are not initiated.

7. In the backdrop of the aforesaid facts and circumstances of the case, grounds of appeal raised by the assessee and the arguments addressed by the authorized representatives of the parties, 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?”

8. Perusal of the assessment order dated 23.12.2011, available at page 28 to 31 of the appeal set apparently shows that the AO without applying his mind has sought to initiate the penalty proceedings by recording that, *“Penalty proceedings u/s 271(1)(c) read with section 274 of the Income Tax Act, 1961 are initiated. Charge Interest, Issue necessary forms. Give credit of taxes paid.”* AO has not made up his mind at the time of passing assessment order as to whether the penalty proceedings are being initiated under which limb of section 271(1)(c) viz. *“as to whether the assessee has concealed the particulars of income or has furnished inaccurate particulars of income.”*

9. When we examine penalty order at page 2, again it is recorded by the AO that since the claim of the assessee was not admissible as she has not invested long term capital gains as per provisions contained u/s 54 of the Act, ***“penalty proceedings u/s***

271(1)(c) of the Act read with section 274 were initiated.” Even, during the penalty proceedings, AO was not aware or satisfied if he is levying the penalty for concealment of particulars of income or furnishing inaccurate particulars of income by the assessee, but abruptly came to the conclusion in the last para of the penalty order that the assessee has “*furnished inaccurate particulars of income*”.

10. Assessment order seeking to initiate the penalty proceedings as well as penalty proceedings have been initiated by the AO in a mechanical manner without being satisfied as to the requirements lay down u/s 271(1)(c). Hon’ble Karnataka High Court in case of *CIT vs. Manjunatha Cotton and Ginning Factory & Ors. 359 ITR 565 (Karn.)*, affirmed by Hon’ble Supreme Court, dealt with identical issue and has held that when assessee has not been specifically made aware of the charges leveled against her “*as to whether there is concealment of income or furnishing of inaccurate particulars of income on her part*”, the penalty u/s 271(1)(c) is not sustainable. But, in the instant case, till levying the penalty, AO himself was not aware as to under which limb of the section 271 (1)(c) the penalty is being levied.

11. When we examine the case on merits, undisputedly it has come on record that the assessee has received an amount of Rs.2,75,00,000/- crores from the sale of house property and

assessee stated to have booked a Villa of the value of Rs.3,50,00,000/- with Sawhney Builders Pvt. Ltd. by making the initial payment of Rs.2,25,00,000/- vide cheque no.1003062 dated 06.08.2008 and paid another amount of Rs.1,90,00,000/- vide cheque no. 1003072 dated 18.08.2008.

12. However, when Sawhney Builders with whom the amount for purchase of Villa was deposited by the assessee in order to claim exemption u/s 54 of the Act, has not been granted permission by the Delhi Development Authority (DDA) and the project has not taken off, the assessee surrendered the amount of Rs.2,13,07,291/- claimed as exemption u/s 54 of the Act.

13. So when undisputedly assessee has deposited amount of Rs.2,25,00,000/- and Rs.1,90,00,000/- on 05.08.2008 and 18.08.2008 respectively and this fact is duly proved from bank statement, available at page 37 of the paper book, no malafide can be attributed to the assessee in investing the sale proceed of the house property to claim the exemption u/s 54 of the Act, particularly when it is proved from the licence of Sawhney Builders, copy of which is available at page 11 of the paper book, was valid upto 17.11.2008 though subsequently revoked for non-fulfilling certain conditions. In these circumstances, findings returned by AO as well as Id. CIT (A) that the assessee has neither

purchased the property nor has constructed the property within the prescribed period as per provisions contained u/s 54 of the Act and as such, proceeded to initiate penalty proceedings u/s 271(1)(c) of the Act are not sustainable being not based on the facts.

12. Moreover, when the assessee has categorically intimated AO vide letter dated 21.12.2011, as referred by AO, in page 3 of the assessment order, that due to recession in real estate, the builders/ developers were not able to deliver the Villa within 3 years as per their commitment, she has surrendered the exemption claimed u/s 54 of the Act to buy peace and to avoid further litigation with the department on the condition that “*penalty proceedings u/s 271(1)(c) are not initiated*”, there is no question of concealment of income or furnishing of inaccurate particulars of income.

13. Moreover, merely the fact that claim of exemption of the assessee u/s 54 has been rejected by the AO is no ground to levy the penalty u/s 271(1)(c). Reliance in this regard is placed on the decision of Hon’ble Supreme Court in case of ***Reliance Petro Products Pvt. Ltd. – 322 ITR 158*** wherein it is held that unless the detail supplied by the assessee in its return are found to be incorrect or erroneous or false, there is no question of initiating penalty u/s 271(1)(c) of the Act.

14. In view of what has been discussed above, AO has failed to make out the case of concealment of income or furnishing of inaccurate particulars of such income by the assessee so as to attract the provisions contained u/s 271(1)(c) of the Act, hence penalty levied by AO and confirmed by Id. CIT (A) is hereby ordered to be deleted. Consequently, appeal filed by the assessee is allowed.

Order pronounced in open court on this 19th day of December, 2018.

**Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER**

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

Dated the 19th day of December, 2018

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-7, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**