

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI G.D.AGRAWAL, HON'BLE VICE PRESIDENT  
&  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.2575/Del/2015  
Assessment Year: 2007-08**

Suresh Dutt Malhotra, 590-Revenue, Model Town, Panipat. (PAN: AISPM4484G)	vs	Asstt. Commissioner of Income Tax, Panipat.
<b>Appellant</b>		<b>Respondent</b>

**Assessee by : Shri K. Sampath, Adv., Shri V. Rajkumar, Adv.  
Revenue by : Shri G. Johnson, Sr. DR**

<b>Date of Hearing</b>	<b>11.10.2018</b>
<b>Date of Pronouncement</b>	<b>09.01.2019</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, J.M.**

This appeal has been preferred by the assessee against the order of the Ld. CIT (Appeals)-Rohtak and pertains to assessment year 2007-08 wherein, vide the impugned order, the Ld. Commissioner of Income Tax (Appeals) has confirmed the imposition of penalty amounting to Rs. 93,97,840/- imposed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter called 'the Act').

2.0 Brief facts of the case are that the return of income was filed declaring an income of Rs. 31,74,010/-. During the course of assessment proceedings, the Assessing Officer noticed that there was a deposit of Rs. 1.40 crore in the bank account of the assessee with the Punjab National Bank (PNB), New Delhi and another deposit of Rs. 6,13,81,250/- in PNB, Panipat. It was explained to the Assessing Officer that these deposits pertained to sale proceeds of the agricultural land sold by the assessee. The assessee filed copy of sale deed which showed sale of total land measuring 11 acres to M/s Sutluj Real Estate (P) Ltd. and M/s Kanchanjunga Realtors (P) Ltd. on 24.04.2006 for a consideration of Rs. 8,61,50,000/-. The land was said to be situated in Village Azizullapur, Tehsil Panipat. It was the assessee's claim that the land sold was situated beyond 8 Kms from the municipal limits and as such it was not a capital asset in terms of section 2(14) (iii) of the Act. In support, the assessee furnished a copy of letter issued by Tehsildar, Panipat. However, the Assessing Officer, through his office, collected information of another piece of land situated in the same village in the case of another assessee from the office of the District Town Planning Officer, Panipat who, as per letter No. 2193 dated 31.12.2007,

informed that the distance of the land was approximately 1.8 kms from the extended municipal boundary of Panipat. The Assessing Officer went on to hold that the land sold by the assessee was a 'capital asset' within the meaning of section 2(14)(ii) of the Act and, therefore, the assessee was liable to capital gain tax.

2.1 It was further explained before the Assessing Officer that the 11 acres of land was acquired from the assessee's father through a court decree in the month of May, 1988 and was sold for a consideration of Rs. 8,61,50,000/-, against which the assessee had made investment in purchase of land worth Rs. 3,85,70,000/- between 21.8.2006 and 4.4.2007 and further purchased land worth Rs. 1,07,21,900/- on 15.11.2007 and 22.4.2008 so as to claim benefit of deduction u/s 54B of the Act. It was also submitted that the assessee had invested a sum of Rs. 10,00,000/- on reconstruction of its residential house at Panipat which was eligible for deduction u/s 54F(1) of the Act. The Assessing Officer accepted the assessee's claim u/s 54B with respect to the investment of Rs. 3,85,70,800/- made in purchase of land before 31.07.2007 i.e. the due date of filing the return of income. The claim of exemption of the remaining investment in

land purchase of Rs. 1,07,21,900/- was disallowed for the reason that the said land was purchased subsequent to the due date of filing of return of income and further the assessee also did not deposit the balance amount in Bank under the capital gain account scheme. The exemption of Rs. 10,00,000/- claimed u/s 54F(1) was also disallowed on the ground that the reconstruction had been carried out on plot before one year from the date of transfer of the original asset.

2.2 The assessee preferred an appeal against the impugned order which was upheld by the Ld. Commissioner of Income Tax (Appeals). The assessee's appeal before the ITAT was also dismissed vide order dated 10.4.2017 in ITA No. 3477/Del/2012.

2.3 Meanwhile, the Assessing Officer imposed penalty of Rs. 93,97,840/- u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. This penalty was confirmed by the Ld. Commissioner of Income Tax (Appeals) vide impugned order dated 24<sup>th</sup> April, 2017. The assessee is now before the ITAT against the said penalty.

3.0 The Ld. AR drew our attention to the certificate received from the Tehsildar mentioning that the distance of the impugned

land from the municipal limits of Panipat was more than 8 Kms. It was submitted that the assessee had made a claim of the land not falling under the definition of capital asset and, therefore, not being exigible to the capital gains tax on the basis of this certificate only. It was further submitted that the certificate of the District Town Planning Officer, based on which the Assessing Officer had made the disallowance, mentioned that the impugned land was 1.8 Kms from the extended municipal limits and, thus, there was a difference of opinion between the Tehsildar and the District Town Planning Officer. He also drew our attention to copy of '*Jamabandhi*' of the impugned land placed on record and pointed out that as per the '*Jamabandhi*', the nature of land was agricultural. The Ld. AR further submitted that the penalty had been wrongly imposed and wrongly upheld by the lower authorities for furnishing inaccurate particulars of income although it was very much evident that it was not a case of filing of inaccurate particulars of income. It was submitted that all the relevant details were filed before the Assessing Officer and no inaccurate particulars had been furnished by the assessee. It was submitted that it is a different issue that the claim of the assessee was not accepted because the assessee relied on one

certificate from the Tehsildar whereas the Assessing Officer placed reliance on another certificate from the District Town Planning Officer but this did not tantamount to furnishing of inaccurate particulars of income. It was submitted that it is just a case where the claim of the assessee was not accepted but by no stretch of imagination could it be said that the assessee had furnished inaccurate particulars of income. It was prayed that the penalty imposed may be deleted.

4.0 In response, the Ld. Sr. DR placed extensive reliance on the concurrent finding of both the lower authorities and vehemently argued that the assessee had furnished inaccurate particulars in so far as the certificate of Tehsildar was incorrect. It was prayed that the penalty deserved to be upheld.

5.0 We have heard the rival submissions and perused the material available on record. The Hon'ble Supreme Court, in the case of Hindustan Steel Ltd. v. State of Orissa 83 ITR 26, had laid down the position of law by holding that the Assessing Officer is not bound to levy penalty automatically simply because the quantum addition has been sustained. Also in case of CIT v. Khoday Eswara (83 ITR 369) (SC), incidentally reported in same ITR Volume, it is held that penalty cannot be levied solely on

basis of reasons given in original order of assessment. The Hon'ble Supreme Court has recently reiterated the law in case of Dilip N. Shroff v. Jt. CIT [2007] 291 ITR 519 by holding in Para 62 that finding in assessment proceedings cannot automatically be adopted in penalty proceedings and the authorities have to consider the matter afresh from different angle. The statute requires a satisfaction on the part of the Assessing Officer. He is required to arrive at a satisfaction so as to show that there is primary evidence to establish that the assessee had concealed the amount or furnished inaccurate particulars and this onus is to be discharged by the Department. While considering whether the assessee has been able to discharge his burden the Assessing Officer should not begin with the presumption that he is guilty. Since the burden of proof in penalty proceedings varies from that in the assessment proceedings, a finding in the assessment proceedings that a particular receipt is income cannot automatically be adopted, though a finding in the assessment proceedings constitutes good evidence in the penalty proceedings. In the penalty proceedings the authorities must consider the matter afresh as the question has to be considered from a different angle. It is important to keep in mind the fundamental

legal proposition that Assessment proceedings are not conclusive. Assessment proceedings and penalty proceedings are separate and distinct. Findings in Assessment proceedings don't operate as res judicata in penalty proceedings. For this proposition reliance is placed on the decision in CIT vs. Dharamchand L. Shah (1993) 204 ITR 462 (Bom). In Vijay Power Generators Ltd vs. ITO (2008)6 DTR 64 (Del) it was held that *"It is well settled that though they constitute good evidence do not constitute conclusive evidence in penalty proceedings."* During penalty proceedings, there has to be reappraisal of the very same material on the basis of which the addition was made and if further material is adduced by the assessee in the course of the penalty proceedings, it is all the more necessary that such further material should also be examined in an attempt to ascertain whether the assessee concealed his income or furnished inaccurate particulars. Thus, under penalty proceedings assessee can discharge his burden by relying on the same material on the basis of which assessment is made by contending that all necessary disclosures were made and that on the basis of material disclosed there cannot be a case of concealment of income or furnishing inaccurate particulars of

income. Further if there is any material or additional evidence which was not produced during assessment proceedings same can be produced in penalty proceedings as both assessment and penalty proceedings are distinct and separate. In CIT vs. M/s Sidhartha Enterprises (2009) 184 Taxman 460 (P & H)(HC) it was held that the judgment in Dharmendra Textile cannot be read as laying down that in every case where particulars of income are inaccurate, penalty must follow. Even so, the concept of penalty has not undergone change by virtue of the said judgment. Penalty is imposed only when there is some element of deliberate default.

5.1 At this juncture it may be apposite to refer to the decision of the Hon'ble Supreme Court in the case of *CIT v. Reliance Petroproducts (P.) Ltd.* [\[2010\] 322 ITR 158/189 Taxman 322](#), wherein the court while interpreting the provisions of section 271(1)(c) of the Act, has held that a glance at the said provision would suggest that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate of his income. In the facts of that case, the court found that it was not a case of concealment of the particulars of the income, nor was it

the case of the revenue either. However, the counsel for the revenue suggested that by making an incorrect claim for the expenditure on interest, the assessee had furnished inaccurate particulars of income. The court observed that it had to only see as to whether in that case, as a matter of fact, the assessee had given inaccurate particulars. The court noted that as per Law Lexicon, the meaning of the word "particular" is a detail or details (in the plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particular" used in section 271(1)(c) would embrace the meaning of the details of the claim made. The court further observed that in *Webster's Dictionary*, the word "inaccurate" has been defined as: "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript." The court observed that reading the words "inaccurate" and "particulars" in conjunction, they must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. The court noted that it was an admitted position that no information given in the return was found to be incorrect or inaccurate. It was not as if any statement made or any detail supplied was found to be factually incorrect and

accordingly, held that, *prima facie*, the assessee could not be held guilty of furnishing inaccurate particulars. The court repelled the contention raised by the counsel for the revenue that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". The court held that in order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. Therefore, it is obvious that it must be shown that the conditions under section 271(1)(c) must exist before the penalty is imposed. The court further observed that there can be no dispute that everything would depend upon the return filed because that is the only document, where the assessee can furnish the particulars of his income. With regard to the provisions of section 271(1)(c) of the Act pertaining to penalty, the Hon'ble Apex Court has authoritatively laid down that making of a claim by the assessee which is not sustainable will not tantamount to furnishing inaccurate particulars. In CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 (SC), the Hon'ble Apex Court has held as follows:

*“A glance at this provision would suggest that in order to be covered, there has to be concealment of particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The present is not a case of concealment of income. That is not the case of the Revenue either. However, the Ld. Counsel for the revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the [section 271](#) (1) (c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The learned counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income." We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars.”*

5.2 We also note that an identical issue had come up before the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Rajeev Bhatara reported in 360 ITR 121 (P&H) wherein it was the assessee's plea before the Assessing Officer that no capital gain tax was imposable in his case as the property which he had sold was situated beyond 8 Kms from the municipal limits of Panipat. After collecting information regarding the distance from various authorities, the Assessing Officer came to the conclusion that the property was situated within 8 Kms of municipal limits of Panipat. Consequently, the Assessing Officer rejected the assessee's claim and brought capital gain to tax and also levied penalty. While allowing the claim of the assessee, the ITAT noted that the assessee had furnished a certificate from the Sub Divisional Engineer wherein it was specified that the distance from the Panipat Municipal Board to the village where the impugned land was situated was 8.2 Kms. It was also noted by the Tribunal that there were various certificates wherein different distances had been mentioned. After considering the matter, the ITAT came to the conclusion that there was no intention on the part of the assessee to furnish inaccurate particulars of income. On department's appeal, the Hon'ble Punjab & Haryana High

Court held that the order of the Tribunal was justified. In the present case also, the facts are identical inasmuch as the assessee has relied on a certificate issued by the Tehsildar which mentions that the impugned land was beyond 8 kms of the municipal limits of Panipat whereas the Assessing Officer has relied on another certificate from the District Town Planning Officer which means that the distance was less than 8 kms. However, in such circumstances, it cannot be said that the assessee has furnished inaccurate particulars of income and respectfully following the ratio of the various judgements as quoted by us in the preceding paragraphs, we are of the considered opinion that this case is not a fit case for imposition of penalty u/s 271(1)(c) for furnishing inaccurate particulars of income as a case for furnishing of inaccurate particulars of income is not made out. Accordingly, we set aside the order of the Ld. Commissioner of Income Tax (Appeals) and direct the Assessing Officer to delete the impugned penalty.

6.0 In the final result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 09.01.2019.

**Sd/-**

**(G.D.AGRAWAL)  
VICE PRESIDENT**

**Sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 09.01.2019  
'GS'

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

ASSTT. REGISTRAR

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	
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	