

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER**

**ITA No. 1834/Del/2016
Assessment Year: 2011-12**

Jagdamba Prasad Gupta 108, Block-B, Phase-1, Vivek Vihar, Delhi. AEEPG8550R	vs	ACIT Circle 35(1) New Delhi.
APPELLANT		RESPONDENT

Assessee by	Ms. Kriti Gupta, CA
Revenue by	Sh. N.K. Bansal, Sr. DR

Date of Hearing	21.01.2019
Date of Pronouncement	21.01.2019

ORDER

PER SHRI BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-19, New Delhi dated 15/01/2016 for AY 2011-12, challenging the levy of penalty u/s 271(1)(c) of the I.T. Act.

2. Briefly the facts of the case are that the AIR Information in the case of the assessee revealed that assessee had sold a house property which was not disclosed in the return of income filed by the assessee. The assessee explained that he has sold the house property for Rs. 55 lakhs, however, the same was not taxable as the capital gains had been invested in the purchase of another

property, therefore, income was exempt u/s 54 of the Act. The AO, however, found that property purchased was a free hold commercial plot and not a residential house as is required to be purchased in compliance with the provisions of Section 54 of the Act. This amount was, therefore, added to the income. Another addition was made in respect of amount of interest which was claimed deduction in respect of the said property. The penalty proceedings were initiated and in absence of any explanation from the side of the assessee, penalty u/s 271(1)(c) was levied. The Ld. CIT(A) confirmed the levy of penalty.

3. Ld. Counsel for assessee submitted that the AO issued show cause notice dated 31/12/2013 u/s 274 read with section 271(1)(c) of the Act before levy of the penalty which is illegal and bad in law because the show cause notice contained the following:

“have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5.”

4. She has submitted that since the show cause notice contained both the limbs of section 271(1)(c) of the Act, therefore, it is void, therefore, no penalty could be imposed. In support of her contention, she has relied upon decision of the Karnataka High Court in the case of CIT vs. M/s SSA's Emerald Meadows reported in 73 taxmann.com 241 in which in the similar circumstances penalty was held to be rightly cancelled. This judgment is confirmed by the Supreme Court by dismissing the SLP of the Department reported in 73 taxmann.com 248. On the other hand,

Ld. DR relied upon orders of the authorities below and submitted that the assessee did not raise the plea before the authorities below that there is a defect in the notice, therefore, additional ground cannot be raised at this stage and relied upon judgment of the Madras High Court in the case of Sundram Finance Ltd. vs. ACIT 403 ITR 407 which is confirmed by the Supreme Court by dismissing the SLP reported in 99 taxmann.com 152.

5. We have considered the rival submissions and perused the material on record. It is admitted fact that the AO before levy of the penalty u/s 271(1)(c) of the Act issued show cause notice to the assessee dated 31/12/2013, copy of which is filed at page 1 of the Paper Book. In the said notice the AO has mentioned "*have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5*". In this notice the AO has mentioned both the limbs of section 271(1)(c) of the Act that assessee have concealed the particulars of the income or furnished inaccurate particulars of such income. AO has not specified in the notice as to under which limb of section 271(1)(c) of the Act a show cause notice has been issued against the assessee for levy of the penalty. The Hon'ble Karnataka High Court in the case of CIT vs. M/s SSA's Emerald Meadows (supra) confirmed the order of the Tribunal by dismissing the Departmental appeal in which the Tribunal has allowed the appeal filed by the assessee holding the notice issued by AO u/s 274 read with section 271(1)(c) of the Act to be bad in law as it did not specify which limb of section 271(1)(c) of the Act, the penalty proceedings had been

initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The SLP of the Department has also been dismissed by the Supreme Court. The AO in the assessment order while making the addition has also noted “penalty proceedings u/s 271(1)(c) of the Act are initiated separately for filing inaccurate particulars/concealment of income”. AO was not sure as to under which limb of section 271(1)(c) of the Act penalty proceedings have been initiated in the assessment order. The assessee while challenging the penalty order before Ld.CIT(A) has raised a specific ground that the order passed by the AO is erroneous, illegal and against the principles of natural justice and equity. The same ground is raised in the present appeal as well. Thus, the assessee challenged the legality of the penalty order before Ld. CIT(A) which includes the legality of the show cause notice for levy of the penalty. Since the notice issued before levy of the penalty dated 31/12/2013 is void, illegal and bad in law, therefore, it was rightly challenged that entire penalty proceedings are illegal and vitiated. Thus, assessee practically did not raise any additional ground in this regard. Since the notice dated 31/12/2013 is void, bad in law and illegal, therefore, entire penalty proceedings are vitiated and are liable to be quashed. The issue is covered in favour of the assessee by the judgment in the case of SSA’s Emerald Meadows (supra). The decision relied upon by the Ld. DR, thus, would not support the case of the Revenue.

6. In view of the above discussion, we set aside the order of the authorities below and quashed the penalty proceedings. Penalty cancelled.

7. In the result, appeal of assessee is allowed.

Order pronounced in the open court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 21.01.2019

*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	21/01/2019
Date on which the typed draft is placed before the dictating Member	21/01/2019
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	21/01
Date on which the final order is uploaded on the website of ITAT	21/01
Date on which the file goes to the Bench Clerk	21/01
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	

