

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

BEFORE SH. N. S. SAINI, ACCOUNTANT MEMBER  
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

**I. T. A. No. 562/(Asr)/2015**  
Assessment Year: 2007-08

The ITO,  
Ward-3(2),  
Jalandhar

Vs. Shri Sarwan Singh Phillaur,  
1063, Urban Estate,Phase-2,  
Jalandhar

PAN No. AFYPP 7809M

**(Appellant)**

**(Respondent)**

**&**

**I. T. A. No. 531/(Asr)/2015**  
Assessment Year: 2007-08

Shri Sarwan Singh Phillaur, Vs. The ITO,  
1063, Urban Estate,  
Phase-2,  
Jalandhar  
PAN No. AFYPP 7809M

Ward-3(2),  
Jalandhar

Appellant by : Sh. R.K.Sarna, AR  
Respondent by: Shri Bhawani Shankar, DR

Date of Hearing : 13.2.2019  
Date of Pronouncement : 14.2.2019

**ORDER**

**Per N.S. SAINI, AM:**

These cross appeals preferred by the Revenue and assessee are directed against the Order by the Commissioner of Income Tax (Appeals)-2, Jalandhar dated 19.8.2015.

2. The sole issue involved in these appeals is that the CIT(A) erred in partly confirming the levy of penalty u/s 271(1)(c) of the I.T. Act, 1961 (hereinafter referred to as "Act", in short) at Rs. 33 lacs in place of Rs. 1,50,75,000/- levied by the AO. On the other hand, the Revenue is in appeal against the order of the CIT(A) in partly deleting the penalty levied u/s 271(1)(c) of the Act at Rs. 1,17,75,000/- (Rs. 1,50,75,000 - Rs. 33,00,000 ).

3. The brief facts of the case are that the AO observed that a housing society constituting 95 persons and Ex.MLA of Punjab Legislative Assembly was formed which was the owner of 21.2 acres of land in Village Kansal, Distt. Mohali on 25.2.2007. The society named as Punjabi Co-operative Housing Building Society Ltd, Mohali entered into a tripartite agreement with M/s Hash Builders (Pvt) Ltd, Chandigarh and M/s Tata Housing Development Company Limited, Mohali by virtue of which the Society would transfer its land for development in lieu of monetary consideration and also consideration in kind to the members of the society. He observed that the members of the society owing 500 sq yards land had received Rs. 33 lacs till date whereas members having 100 sq yds has received Rs. 66 lacs till date. The AO was of the view that the transfer of the plot at Mohali took place on 25.2.2007. The land belonging to the assessee was transferred to M/s Tata Housing Development Company Ltd and M/s Hash Builders (Pvt.) Ltd for monetary consideration and consideration in kind was Rs. 82,50,000/- and Rs. 1,01,25,000/- which was the cost of land was the consideration in kind. The total consideration was thus Rs. 1,83,75,000/-. The AO was of the opinion that since the assessee had not

invested the net consideration in the purchase of the new assets nor placed such consideration in the capital gain scheme as per sub section (4) to section 54 of the Act, the entire capital gain arising from the assets from the transfer of land had escaped assessment. Therefore, he issued notice u/s 148 of the Act and made addition of the capital gains of Rs. 1,83,75,000/- in the hands of the assessee.

4. On appeal, the Ld. CIT(A) dismissed the appeal of the assessee.

5. On further appeal, before the Tribunal, the Amritsar Bench of the Tribunal confirmed the findings of the AO.

6. Thereafter, the AO levied penalty u/s 271(1)(c) of the Act of Rs. 41,64,531/- being 100% of the tax sought to be evaded by the assessee on the ground of furnishing of inaccurate particulars of income.

7. On appeal, the Ld. CIT(A) held that it is undisputed fact that there were certain controversy and dispute with regard to the transfer of plot. The various works were still not completed and the construction of the building in which the Appellant was to get one flat as a part of sale consideration had not started till date. In these facts and circumstances of the case, the belief of the Appellant that Long Term Capital Gains on the amount of balance consideration in cash and value of flat which was yet to be received is not payable in the year under consideration cannot be considered to be totally unreasonable. He held that in view of this fact, the penalty u/s 271(1)(c) on an amount of Long Term Capital Gains of Rs. 1,50,75,000/- (1,83,75,000– Rs. 33,00,000) for concealing and furnishing of inaccurate particulars of income cannot be

said to be justified and further observed that the quantum addition of Rs. 1,50,75,000/- which forms basis of levy of penalty u/s 271(1)(c) of the Act in this case stands deleted by the Hon'ble Punjab & Haryana High Court vide its order in ITA No. 232 of 2014 dated 22.7.2015 in the case of the assessee itself and some other cases as basis of levy of penalty u/s 271(1)(c) of the Act in this case of amount Rs. 1,50,75,000/- has gone, penalty levied by the AO on this amount cannot be sustained. However, the assessee has not disclosed any Long Term Capital Gains either in original return or in the return filed in response to the notice u/s 148 of the Act, therefore, penalty levied by the AO on Long Term Capital Gains of Rs. 33 lacs is upheld.

8. Being aggrieved by the said order of the CIT(A), both the assessee and Revenue is in appeal before us.

9. Before us, Ld. AR of the assessee filed copy of the notice dated issued u/s 274 of the Act. We find that the notice dated 22.12.2010, issued u/s 274 read with section 271(1)(c) of the I.T. Act, 1961 reads as under:-

*“Whereas in the course of proceedings before me for Assessment Year 2007-08 it appears to me that*

*—*

*.....*

*Have concealed the particulars of your income or..... furnished inaccurate particulars of such income”*

10. We have heard the rival submissions and perused the orders of the lower authorities and materials available on record.

11. Hon'ble Apex Court vide judgment in case of *M/s. SSA's Emerald Meadows, (2016) 73 taxmann.com 248(SC)* dismissed the Special Leave Petition filed by the Revenue against the judgment rendered by Hon'ble High Court of Karnataka whereby identical issue was decided in favour of the assessee. Operative part of the judgment in case of *M/s. SSA's Emerald Meadows* (supra) decided by Hon'ble High Court of Karnataka is reproduced below :-

*"2. This appeal has been filed raising the following substantial questions of law:*

*(1) Whether, omission if assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?*

*(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.s. 271(1)(c) is bad in law and invalid inspite the amendment of Section 271(1 B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?*

*(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued, under Section 274 without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?*

3. *The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short '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 Tribunal,*

*while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of COMMISSIONER or INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565.*

*4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court, the appeal is accordingly dismissed."*

12. Bare perusal of the notice issued u/s 271(1)(c) apparently goes to prove that the Assessing Officer initiated the penalty proceedings by issuing the notice u/s 274/271(1)(c) of the Act without specifying whether the assessee has concealed "particulars of income" or assessee has furnished "inaccurate particulars of income", so as to provide adequate opportunity to the assessee to explain the show cause notice. Rather notice in this case has been issued in a stereotyped manner without applying any mind which is bad in law, hence is not a valid notice sufficient to impose penalty u/s 271(1)(c) of the Act.

13. The penalty provisions of section 271(1)(c) of the Act are attracted where the assessee has concealed the particulars of income or furnished inaccurate particulars of such income. It is also a well-accepted proposition that the aforesaid two limbs of section 271(1)(c) of the Act carry different meanings. Therefore, it was imperative for the Assessing Officer to strike - off the irrelevant limb so as to make the assessee aware as to what is the charge made against him so that he can respond accordingly. The Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar) observed that the levy of penalty has to be clear as to the limb under which it is being levied. As per Hon'ble High Court, where the Assessing

Officer proposed to invoke first limb being concealment, then the notice has to be appropriately marked. The Hon'ble High Court held that the standard proforma of notice under section 274 of the Act without striking of the irrelevant clauses would lead to an inference of non-application of mind by the Assessing Officer. The Hon'ble Supreme Court in the case of Dilip N. Shroff vs. JCIT, 291 ITR 519(SC) has also noticed that where the Assessing Officer issues notice under section 274 of the Act in the standard proforma and the inappropriate words are not deleted, the same would postulate that the Assessing Officer was not sure as to whether he was to proceed on the basis that the assessee had concealed the particulars of his income or furnished inaccurate particulars of income. According to the Hon'ble Supreme Court, in such a situation, levy of penalty suffers from non-application of mind. In the background of the aforesaid legal position and, having regard to the manner in which the Assessing Officer has issued notice under section 274 r.w.s. 271(1)(c) of the Act dated 22.12.2010 without striking off the irrelevant words, the penalty proceedings show non-application of mind by the Assessing Officer and is, thus, unsustainable.

14. The facts of the present appeal are identical to the facts of the case before the Hon'ble Karnataka High Court in the case of SSA's. Emerald Meadows(supra). In the instant case the AO while levying penalty u/s 271(1)(c) has observed that the assessee has concealed the particulars of his income and has also furnished inaccurate particulars thereof. Thus, he is not specific as to whether the penalty is levied for concealment of income or for furnishing inaccurate particulars of such income. Hence, respectfully following the quoted decision of Hon'ble Karnataka High Court, we

cancel the order of the penalty passed by the AO u/s 271(1)(c) of the Act on 28.3.2014. Resultantly, the appeal filed by the Revenue stands dismissed, whereas, the appeal of the assessee is allowed.

15. In the result, the appeal of the Revenue is dismissed and appeal filed by the assessee stands allowed.

Order pronounced in the open court on 14.2.2019.

Sd/-  
**(N. K. Choudhry)**  
**Judicial Member**

Sd/-  
**(N.S. Saini)**  
**Accountant Member**

Date: 14.02.2019

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Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.