

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.4299/Del./2018
Assessment Year 2009-2010

M/s. Elevate Developers Pvt. Ltd., 43, Community Centre, New Friends Colony, New Delhi – 110065 PAN AABCE4653M	vs.	The DCIT, Circle-8(1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Ashwani Kumar, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	27.02.2019
Date of Pronouncement :	05.03.2019

ORDER

This appeal by assessee has been directed against the order of Learned CIT(A)-3, Delhi dated 26th April 2018, for the assessment year 2009-2010, challenging the levy of penalty under section 271(1)(c) of the Income Tax Act, 1961.

2. Briefly the facts of the case are that assessee filed return of income declaring income of Rs.39,09,563/- on 26th September, 2009 and the same as processed under section 143(1) of the Income Tax Act 1961. Subsequently, notice

under section 148 was issued after recording reasons to believe that income has escaped assessment. The assessing officer passed the assessment order under section 143(3)/147 of the Income Tax Act, 1961 dated 30th December, 2016 holding that assessee has utilised client code modification as a tool for booking of losses at Rs.6,44,060/- to set-off its income so earned from the real estate business at Rs.2,24,92,592/-, thereby, the claim by assessee from client code modification methodology at Rs.6,44,060/- was disallowed and added to the income of assessee. The assessing officer, in the assessment order initiated the penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars. The assessing officer vide separate order levied the penalty under section 271(1)(c) of the Act on this addition holding that assessee has **“deliberately concealed the particulars of income”** to the extent of Rs.6,44,060/-. The Learned CIT(A) dismissed the appeal of assessee.

3. I have heard the Learned Representatives of both the parties and perused the material on record.

4. Learned Counsel for the Assessee, at the outset, submitted that the assessing officer on the date of passing of the assessment order on 30th December, 2016, issued show cause notice under section 274 read with section 271 of the Income Tax Act before levy of the penalty in which assessing officer has mentioned as under :

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

4.1. Learned Counsel for the Assessee submitted that assessing officer in the assessment order has initiated the penalty proceedings for furnishing inaccurate particulars, however, levied the penalty under different limbs of Section 271(1)(c) of the Income Tax Act for concealing particulars of income. In the show cause notice, the assessing officer has mentioned both the limbs of Section 271(1)(c) of the Income Tax Act. Therefore, the notices issued before levy of the

penalty is invalid and bad in law and no penalty is leviable because the satisfaction of the assessing officer in the impugned order are also invalid and bad in law.

5. On the other hand, Learned Departmental Representative relied upon the orders of the authorities below and submitted that A.O. rightly initiated the penalty proceedings under section 271(1)(c) of the Income Tax Act, therefore, appeal of assessee may be dismissed.

6. After considering the rival submissions, I am of the view that the issue is covered by the order of ITAT, Delhi A-Bench in the case of Shri Amardeep Dalal, Noida vs. The ACIT, Central Circle-17, New Delhi in ITA.Nos.3539 and 3540/Del./2015, Dated 06.02.2019 wherein, the Tribunal by following the Order of the Hon'ble Karnataka High Court in the case of CIT vs. M/s. SSAs Emerald Meadows 73 taxmann.com 241, which decision is confirmed by the Hon'ble Supreme Court reported in 73 taxmann.com 248, has allowed the appeal of assessee because notice of penalty did not specify in which limb of Section 271(1)(c) of the I.T.

Act, the penalty has been initiated, whether for concealment of income or furnishing inaccurate particulars of income.

6.1. In the present case, the assessing officer while passing the assessment order initiated the penalty proceedings for furnishing inaccurate particulars of income. However, levied the penalty for concealing the particulars of income. In the show cause notice issued before levy of the penalty, both the limbs of section 271(1)(c) of the Income Tax Act have been mentioned. Therefore, the notice is invalid and bad in Law, which resulted into vitiating the entire penalty proceedings. The satisfaction of the assessing officer is also defective as noted above in the impugned orders. Therefore, no penalty is leviable. I, accordingly, set aside the orders of the authorities below and cancel the penalty.

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

Order pronounced in the open Court.

Delhi, Dated 05th March, 2019

VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.