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

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA Nos.1286/Del/2017
Assessment Years: 2012-13

Dr Sita Bhagi, **83, Sukhdev Vihar,** **New Delhi.** **PAN:AAGPB2916E**	**vs**	**ACIT, Circle 65(1),** **New Delhi.**
Appellant		Respondent

Appellant by: S/Sh. Jasmeet Singh, Hemant Jain, SafeAli, Advocates, Abhay Sikka, CA

Respondent by: Shri N.K. Bansal, Sr. DR

Date of hearing: 06.03.2019
Date of Pronouncement: 04.04.2019

ORDER

PER K.NARASIMHA CHARY, JM

Aggrieved by the order dated 7/12/2016 in Appeal No.248/2015-16, passed by the learned Commissionerof Income Tax (Appeals)-21, New Delhi ("Ld. CIT(A)"), assessee preferred this appeal.

2. Brief facts of the case, as could be culled out from the record, are that the assessee is a government doctor and earning salary income. For Assessment year 2012-13, the assessee filed her return of income on 2010-11 2012 declaring a total income of Rs.20,59,962/-which

comprised of Rs.20,58,291/-as the income from salary, Rs.77,48,487/-as the income from long-term capital gain, Rs.1.5 Lacs is a loss from house property and Rs.2,71,671/-from other sources. Assessee claimed deduction under section 54 of the Income Tax Act, 1961 (for short "the Act") to the tune of Rs.77,48,487/- on account of investment in residential property amounting to Rs.41,39,135/-against which the assessee deposited an amount of Rs.36,09,352/-in capital gain account. Learned Assessing officer found that the assessee had purchased plots in Yamuna Expressway Industrial Development Authority and was required to prove that construction was complete by August 2014, that is, within a period of 3 years from the date of sale of original asset and also that an amount of Rs.36,09,352/-was deposited in capital gain account within the prescribed limit under section 139 (1) of the Act. Assessee admitted her mistake in claiming deduction under section 54-F of the Act and filed a revised computation of income without claiming the deduction under section 54-F of the Act, resulting in the addition of that amount to the income of the assessee. Further in respect of the interest on housing loan to the tune of Rs. 1.5 Lacs, the possession of the flat is not handed over by the builder to the assessee till the date of passing of the order and the assessee by way of revised computation excluded her claim for interest, and such an amount was also added back to the income of the assessee. Further, for want of evidence in respect of the interest accrued from Kotak Mahindra bank and IDFC Ltd Ld. Assessing officer made an addition to the tune of Rs.14,587/-. Ld. Assessing officer initiated proceedings under section 271(1)(c) of the

Act for failure to disclose particulars of income and for concealment of income, and concluded them by order dated 28/9/2015 by levy of penalty of Rs.24,70,569/-.

3. In the appeal preferred against the said levy of penalty, Ld. CIT(A) held that the assessee had deliberately made false claim for deduction by furnishing inaccurate particulars of income so as to evade the tax and taking the facts and circumstances in their entirety into consideration, Ld. CIT(A) held that the learned Assessing officer was fully justified in holding the assessee guilty of furnishing inaccurate particulars of income so as to evade the tax and imposing the penalty.

4. Argument of the learned AR is thatneither the assessment order nor the notice spell out under which limb of Section 271(1)(c), whether it is for concealment of income or for furnishing of inaccurate particulars, the penalty was proposed. For this proposition he placed reliance on the decisions in the case of CIT vs SSA's Emerald Meadows (SC) in CC No.11485/2016 dated 5.8.2016 and CIT vs. Manjunatha Cotton Ginning Factory (2013) 359 ITR 565 (kar)(HC). He also placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs Virgo Marketing (P) Ltd. 2008 (172) TAXMAN 83.

5. We have gone through the record in the light of the submissions made on either side. Order dated 25/3/2015 passed under section 143(3) of the Act clearly shows that the learned Assessing Officer made three additions namely, Rs.77,48,487/-under the head 'capital gains' being long-term capital gain with indexation, Rs.1.5 Lacs under the head

'income from house property' withdrawing interest claimed on housing loan and Rs.14,587/-being the interest on savings bank account. However learned Assessing Officer did not recorded his satisfaction under any of these heads. At the end, learned Assessing Officer recorded that penalty notice under section 271(1)(c) of the Act was being issued separately. At no place learned Assessing Officer thought it fit to record satisfaction as to whether it was appropriate to initiate proceedings under section 271(1)(c) of the Act by clearly stating whether any of these additions are made either for concealment of income or for furnishing of inaccurate particulars. Except stating that the penalty notice under section 271(1)(c) of the Act, learned assessing officer did not specify for violation of which limb of section 271(1)(c) of the Act he proposes to issue the notice to levy the penalty.Case of the assessee is that because she was not put on notice as to which charge she has to defend whether it was for concealment of income or for furnishing of inaccurate particulars, shewas put to prejudice and principles of natural justice were violated on account of not being able to submit an effective reply and to defend herself effectively in penalty proceedings.

6. In the case of *CIT vs Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar)*. Vide paragraph 60, the Hon'ble Karnataka High Court has held as follows :-

> *"60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the*

initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable."

7. In ITA 380/2015, the Hon'bleKarnataka High Court Considered the question of law as to,-

"*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?*"

And the Hon'bleHigh Court ruled answered the same in favour of the assessee observing that:

> "*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 Of Income Tax -Vs- Manjunatha Cotton And Ginning Factory(2013) 359 ITR 565. 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.*"

The Special Leave Petition filed by the Revenue challenging the aforesaid judgement of the High Court was dismissed by the Hon'ble Apex Court with the following observation:-

> "*We do not find any merit in this petition. The special leave petition is, accordingly, dismissed.*"

8. Further, we notice that the facts involved in this matter are very similar to the facts involved in the case of CIT vs Virgo Marketing (P) Ltd. 2008 (172) TAXMAN 83 wherein while assessing the income of the assessee, at the end of the order, Ld. AO observed "Penalty proceedings under s. 271(1)(c) have been initiated separately." Hon'ble High Court held that there was no proper satisfaction recorded by the learned Assessing Officer while concluding the assessment, and while respectfully following this decision of the Hon'ble jurisdictional High Court in this case, we conclude that there is no proper recording of satisfaction by the Ld. AO while initiating the penalty proceedings.

9. It is, therefore, clear that for the AO to assume jurisdiction u/s 271(1)(c) of the Act, proper notice is necessary and because of the

defect in notice u/s 274 of the Act and on the facts of this case, itis difficult to hold that the learned AO rightly assumed jurisdiction to pass the order levying the penalty. In the circumstances, we are of the considered opinion that because of non-recording of proper satisfaction for initiating the penalty proceedings, the penalty cannot be sustained. We accordingly quash the penalty proceedings.

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

Order pronounced in the open court on 4th April, 2019.

Sd/- sd/-

(G.D. AGRAWAL) **(K. NARASIMHA CHARY)**
VICE PRESIDENT **JUDICIAL MEMBER**

Dated: 4th April, 2019
VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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