

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

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.4080/Del/2016
Assessment Year: 2008-09**

M/s Neemrana Hotels Private Limited, A-20B Lajpat Nagar-2, New Delhi.	vs	Dy.Commissioner of Income Tax, Circle 13(1), New Delhi.
Appellant		Respondent

**Assessee by : Shri Salil Kapoor, Adv.
Shri Shivesh Pandiya, Adv.
Department by: Ms Rinku Singh, Sr. DR**

**Date of hearing : 28.02.2019
Date of pronouncement : 24.05.2019**

ORDER

PER SUDHANSHU SRIVASTAVA, JM :

This appeal has been preferred by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-6, New Delhi {CIT (A)} for assessment year 2008-09 wherein vide order dated 1.2.2016, the Ld. Commissioner of Income Tax (A) has upheld the imposition of penalty of Rs. 8,95,256/- 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 during the year under consideration, the assessee company was engaged in the business of running of hotels in various locations spread all over the country. The return of income was filed declaring an income of Rs. 4,28,30,390/-. The assessment was completed at an income of Rs. 5,76,72,750/- after making the following additions/disallowances:-

- i) Addition on account of disallowance u/s 40(a)(ia) of the Act to the tune of Rs. 1,24,49,495/-
- ii) Addition on account of short term capital gain to the tune of Rs. 23,92,871/-.

2.1 Penalty proceedings u/s 271(1)(c) were initiated in the assessment order itself. The assessee's appeal before the Ld. Commissioner of Income Tax (A) was partly allowed wherein the disallowance u/s 40(a)(ia) of the Act was restricted to Rs. 21,60,000/- and the disallowance on account of short term capital gain was reduced from Rs. 23,92,871/- to Rs.4,73,881/-. Subsequently, on the assessee approaching the ITAT, the ITAT deleted the disallowance u/s 40(a)(ia) of the Act and also upheld the addition pertaining to short term capital gains as restricted by the Ld. CIT (A). Thus, the only addition which finally survived

was of Rs. 4,73,881/- which pertained to addition on account of short term capital gain. Subsequently, penalty of Rs. 8,95,256/- was imposed u/s 271(1)(c) of the Act on the total addition of Rs. 26,33,881/- which included the disallowance of Rs. 21,60,000/- pertaining to disallowance u/s 40(a)(ia) of the Act. This penalty of Rs. 8,95,256/- was upheld by the Ld. Commissioner of Income Tax (A) and now the assessee is before the ITAT challenging the confirmation of penalty and has raised the following grounds of appeal:-

“1. That the notice issued u/s 271(1)(c) and order passed under said section imposing penalty of Rs. 8,95,256/- are illegal, bad in law and without jurisdiction.

2. That no valid satisfaction was recorded before initiation of penalty as such the notice u/s 271(1)(c) and penalty order passed under said section are without jurisdiction and liable to be quashed. The CIT (A) has grossly erred in upholding the same.

3. That in the absence of any specific charge, the levying of penalty U/s 271(1)(C) is illegal, bad in law and is liable to be quashed.

4. That the AO had no jurisdiction and authority to pass the impugned penalty order and hence the penalty order is illegal, bad in law and without jurisdiction.

5. That the A.O. and CIT(A) have erred in law and on facts in not appreciating that this is a straight forward case of disallowance of expenses and hence penalty provisions are not attracted .

6. That the A.O. and CIT (A) have erred in law and on facts in not appreciating that on the given facts and circumstances the issues of nature of services and contract, deduction of TDS and rate of deduction of TDS are highly contentious and debatable issues and hence as such no penalty U/s 271 (l)(c) can be levied on that account.

7. That the A.O. and CIT(A) have erred in law and on facts in not appreciating that no penalty can be levied on the amount of addition upheld on the calculation of short term gain as the stand of the assessee has been accepted in principle and the difference arose only due to difference in valuation .

8. That the penalty order u/s 271(1)(c) is against the well established norms and jurisprudence of penalty under the IT Act and against various decisions of ITAT, High Court and Supreme Court.

9. That the appellant had neither concealed income nor had filed inaccurate particulars of income and the CIT (A) has grossly erred in upholding the penalty order.

10. That on the facts and circumstances of the case the CIT (A) has grossly erred in law and on facts in invoking Explanation 1 against the appellant.

11. That without prejudice to above, the AO has levied penalty without giving effect to the ITAT order in quantum appeal.

12. That the explanations filed before the A.O and the material available on record has not been properly considered and legally interpreted. The penalty imposed cannot be justified by any material on record.

13. That in view of the facts and circumstances of the case the observations made are illegal, bad in law and unwarranted and cannot be justified by any material on record.

14. That the appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.

All of the above grounds of appeal are without prejudice and are mutually exclusive to each other.”

3.0 At the outset, the Ld. Authorised Representative (AR) submitted that since the quantum addition pertaining to the disallowance u/s 40(a)(ia) had been deleted totally by the ITAT, penalty could not survive on this addition. With respect to the other addition of Rs. 4,73,881/- pertaining to the short term capital gain, the Ld. AR submitted that the notice u/s 271 read with Sec 274 served on the assessee was vague as it did not specify the charge against the assessee on which the Assessing Officer (AO) wanted to levy the penalty. It was submitted that the notice issued was vague, illegal and without jurisdiction. Hence, the subsequent penalty proceedings and the penalty order passed were also illegal and bad in law. Reliance was placed on the judgments of the Hon'ble Karnataka High Court in the cases of CIT vs. Manjunatha Cotton and Ginning Factory reported in 359 ITR 565 and on CIT vs. SSA Emerald Meadows.

3.1 The Ld. AR further submitted that there was no concealment of income or furnishing of inaccurate particulars of income. It was submitted that this is a simple case where the assessee had apportioned the value of the land and building sold by it on the basis of a valuation report taken from the architect.

This valuation report was not accepted by the AO. However, on appeal, the Ld. CIT (A) upheld the valuation report submitted by the assessee and returned the findings in favour of the assessee and also partly upheld the values of the land and building apportioned in the valuation report. This order of CIT (A) was further upheld by the ITAT. The Ld. AR submitted that this is a case of difference of opinion between the assessee and the AO and a case wherein a claim was made by the assessee in its return on basis of an architect's certificate which was not accepted initially by the AO but in appeal the Ld. CIT (A) had accepted the report and partly allowed the appeal on the basis of the values of land and building mentioned in the report.

3.2 Reliance was placed on the judgment in the case of CIT vs. Bacardi Martini India Ltd reported in 288 ITR 585 wherein it was held that disallowance of claim cannot be a ground to impose penalty under section 271(l)(c). Reliance was also placed on the ITAT's decision in DCIT vs. JMD Advisors Pvt Ltd reported in 124 ITD 223 wherein it was held by the ITAT Delhi benches that no penalty can be levied on the addition made in the assessment on the basis of a valuation report of the DVO.

3.3 In response, the Ld. Senior Departmental Representative (Sr. DR) submitted that on page 40 and 42 of the assessment order, penalty u/s 271(1)(c) has been specifically initiated for furnishing inaccurate particulars and further on page 24 of the penalty order, penalty u/s 271(1)(c) has been specifically initiated for furnishing inaccurate particulars. It was submitted that thus, there was application of mind by the Assessing officer and hence mere non-striking of correct limb in the notice cannot be taken as fatal error. Rather, it is a curable defect and protection u/s 292 BB is also available to the Revenue. The Ld. Sr. DR also submitted that this objection was never raised by the assessee during penalty proceedings or before the Ld. CIT (A) and that the assessee is raising such objection now, after almost 6 years of assessment order dated 28.12.2010, wherein such penalty was initiated and the initial penalty notice dated 28.12.2010 was issued. It was submitted that, thus, on facts, it can be safely concluded that even assuming that there was defect in the notice, it had caused no prejudice to the assessee and that the assessee had clearly understood what was the purport and import of notice issued under Section 274 r/w

Section 271 of the Act. Therefore, principles of natural justice were followed.

4.0 We have heard the rival submissions and have also perused the relevant material on record. As far as the question of penalty on the addition of Rs. 21,60,000/- u/s 40(a)(ia) of the Act is concerned, undisputedly and admittedly, the quantum addition has been deleted by the ITAT. Thus, penalty does not survive on this addition. The AO is directed to give the appeal effect to the Assessee in this regard.

4.1 As far as the addition pertaining to short term capital gain is concerned, it is clear that in the instant case it cannot be said that the assessee had withheld any relevant information regarding the short term capital gains from the AO. The claim of the assessee was based on the valuation report of an architect which was partly accepted by the Ld. CIT (A) also. There is no factual finding by the AO that the assessee had furnished any inaccurate particulars while bifurcating the value between land and buildings while computing short term capital gains. 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."

4.2 Although, both the lower authorities have held that the assessee has furnished inaccurate particulars, on a consideration on the facts, such a view is not tenable in the present appeal. Therefore, respectfully following the judgment of the Hon'ble Apex court in the case of Reliance Petroproducts Pvt. Ltd. (Supra) we delete the impugned penalty.

5.0 Order pronounced in the open court on 24.05.2019.

Sd/-

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

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 24th MAY, 2019
'GS'

Copy forwarded to: -

- 1) Appellant
- 2) Respondent
- 3) CIT(A)
- 4) CIT
- 5) DR

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	