

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

I.T.A. No.7417/DEL/2018
Assessment Year: 2014-15

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| Bloomfield Properties & Holdings Pvt. Ltd., 3, Shivji Marg, Westend Greens, Rang Puri, New Delhi. | v. | Assistant Commissioner of Income Tax, Circle-5(1), New Delhi. |
| TAN/PAN: AAACB3246N | | |
| (Appellant) | | (Respondent) |

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|------------------------|----------------------------|----|------|
| Appellant by: | Shri U.N. Marwah, CA | | |
| Respondent by: | Shri S.L. Anuragi, Sr.D.R. | | |
| Date of hearing: | 15 | 04 | 2019 |
| Date of pronouncement: | 30 | 07 | 2019 |

ORDER

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the assessee against the impugned order dated 08.08.2018, passed by Id. Commissioner of Income Tax (Appeals)-II, New Delhi in relation to penalty proceedings u/s.271(1)(c) for the Assessment Year 2014-15.

2. The assessee is mainly aggrieved by levy of penalty of Rs.9,18,038/- on account of *suo motu* offering of claim of expenses of Rs.29,70,998/-. Besides this, the assessee has also challenged the imposition of penalty on the ground that notices issued u/s.274 r.w.s. 271 is bad in law as Assessing Officer has not specified the charges before initiation of penalty proceedings.

3. The facts in brief qua the issue of levy of penalty are that assessee had filed its return of income on 30.09.2014 declaring loss of Rs.31,20,289/-. Thereafter, assessee's case was selected for scrutiny through CASS and accordingly, notices u/s.143(2) was issued on 28.08.2015. The selection of the case for scrutiny was taken on following points as incorporated in the paragraph 2 of the assessment order:-

- “1. Low income in comparison to high loans/ advances/ investment in shares*
- 2. Mismatch between income declared by remittee in ITR and amount of remittance received (Form 15CA)*
- 3. Profits from business declared NIL in ITR despite of remittance(s) during the year*
- 4. Investment in unlisted equities during the year.”*

4. As noted by the Assessing Officer that in the beginning of the assessment proceedings itself, assessee vide letter dated 19.04.2016 had revised the computation and declared the loss of Rs.1,49,290/- instead of original loss declared in the return of income at Rs.31,20,289/-. The reasons given alongwith the revised computation was as under:

- (i) Claim of Diminution in value of Investments due to Exchange difference at Rs.25,53,600/- as at close of F. Y., being a notional loss is hereby withdrawn;*
- (ii) Claim of Interest Rs.1,40,890/- on loan which has been utilized for advancing of interest Free loan to M/s Kohli One Housing Development Pvt. Ltd. is hereby withdrawn;*

(iii) *Claim of Bank charges of Rs.1,10,659/- relating to Foreign exchange remittance for making Investment in Dash Properties Developers INC is hereby withdrawn;*

(iv) *Claim of Rs.1,68,849/- being Stamp Duty paid on issue of shares in earlier years, included under the head "Fees & Taxes" is hereby withdrawn.*

Thus after giving effect to the aforesaid withdrawal of claims of expenses, the Modified Loss is Rs.1,49,290/- which is represented by:-

- (a) Accounting charges Rs.19,000/- being necessary for existence of the company;*
- (b) Auditors Remuneration Rs.47,191/- being necessary for compliance to corporate laws;*
- (c) Professional Charges Rs.15,500/- being fee for secretarial services required by law;*
- (d) Fees & Taxes Rs.2,624/- excluding [Rs.1,65,849/- being stamp Duty] & Rs.3,000/- being additional fee already surrendered in Return;*
- (e) Depreciation of Rs.64,976/- on computers/printers etc. for maintaining the basic company."*

5. The Assessing Officer accepted the said revised computation, however initiated the penalty proceedings u/s. 271(1)(c). In the penalty order, the Assessing Officer held that since assessee had no business during the year and no revenue was earned hence all the expenses offered by the assessee were not allowable on merit also. Accordingly, he levied the penalty for furnishing of inaccurate particulars of income and also concealment of income in respect of amount of Rs.29,70,999/-. This penalty has been confirmed by the Id. CIT(A) also after observing and holding as under:

“7.4 I have considered the facts of the case and submission of the Appellant. The undisputed facts are that the Appellant filed its return of income claiming deduction for various inadmissible expenses. The Appellant furnished revised computation of income only after Issue of the notice for the scrutiny. The Appellant did not revise its return of income as provided in the Act. Because the claim of the expenses was patently inadmissible, the Assessee did not have any choice but to file revised computation of income before the Assessing Officer to defend itself. In so far as the provisions of income tax act are concerned, the particulars furnished in the return are basis for judging whether the Assessee has filed any inaccurate particulars of income or concealed the particulars of income. It is true that the Assessing Officer imposed the penalty for both the counts, namely, furnishing inaccurate particulars and concealing the particulars of income, but that itself would not render the penalty proceedings invalid or legally not tenable in the light of the decision of CIT Vs Smt. Kaushalya, 216 ITR 660 [Bom]. In the sum and substance, the Appellant had furnished inaccurate particulars of income by claiming the deduction for those expenses which were not allowable. Ground No. 1, 2 & 3 of the appeal are dismissed for the reason that the Assessee did not file revised return of income within the statutory limit provided u/s 139 of the Act. The Assessee only furnished revised computation of income on the issue of scrutiny notice by the Assessing Officer. Hence the plea of the Assessee that it suo moto revised computation of income, is baseless. The Assessing Officer recorded his satisfaction in the Assessment Order before the issue of the notice u/s 274 of the IT Act. As provided in the case of CIT vs. Smt. Kaushalya referred to in above, the Income Tax Act does not provide a particular format for issue of the notice. The only requirement is to provide opportunity of being heard before passing the order. Therefore, I hold that the Assessing Officer rightly imposed the penalty u/s 271(1)(c) of the IT Act, 1961. Accordingly, all

the grounds taken by the Appellant are dismissed and the penalty imposed by the Assessing Officer is upheld.”

6. Before us, the ld. counsel for the assessee submitted that, firstly, the assessee's case was selected for limited scrutiny and the issue of expenses was not the subject matter for selection of the case. Secondly, before any specific query was raised by the Assessing Officer, at the starting of the assessment proceedings itself the assessee has submitted the revised computation and has *suo motu* disallowed certain expenses. The assessee has duly demonstrated before the authorities below the *bona fide* conduct for *suo motu* surrendering the disallowance of Rs.29,70,998/-. Apart from that, he has also challenged the validity of the notice on the ground that neither in the assessment order nor in the penalty proceedings has specified any charge under which limb he is initiating the penalty proceedings. The reliance placed by the ld. CIT(A) in the case of **CIT vs. Smt. Kaushalya (supra)** was a very old decision and now there are many decisions of Hon'ble High Courts in favour of the assessee including decision of Hon'ble Apex Court in the case of **SSA's Emerald Meadows vs. CIT (2016) 73 Taxmann.com 248 (SC)**. Thus, on both counts, penalty is leviable. He has also relied upon various judgments that no penalty u/s. 271(1)(c) can be levied on *suo motu* offer of disallowance of revised computation.

7. On the other hand, ld. DR has relied upon the following decisions.

“1.Pr. CIT-21 vs. Dr. Vandana Gupta (2018) 92 taxmann.com 229 (Delhi) in ITA No.219 of 2017 order dated 20.02.2018.

2. Sundaram Finance Ltd. Vs. ACIT, (2018) 403 ITR 407 (Mad.) order dated 23.04.2018.

3. CIT vs. Smt. Meera Devi (2012) 253 CTR 559 (Delhi)

8. After considering the rival submissions and on perusal of the material placed on record, we find that assessee has filed its return of income u/s. 139(1) declaring loss of Rs.31,20,289/- filed digitally on 30.09.2014. As stated above, the assessee's case was selected for limited scrutiny on the points enumerated above and there was no reference of any allowability or otherwise verification of expenses. Notice u/s. 143(2) was issued on 28.08.2015 and another notice u/s.142(1) dated 05.04.2016 was issued with certain questionnaire. However, as pointed out by the ld. Counsel there is no specific query with regard to the disallowance of expenses. Thereafter, assessee *suo motu* vide letter dated 19.04.2016 had withdrawn certain losses and offered for disallowance in the revised computation on the reasons as incorporated above. It has been stated by the assessee before the authorities below that such a disallowance was *suo motu* at the commencement of assessment proceedings and when accounts were examined by the counsel, then assessee itself offered for the disallowance and has revised a computation. Thus, it cannot be held that the assessee had offered for

disallowance only when assessee was cornered on specific issues relating to expenses. If the assessee offers any disallowance on its own volition without being confronted by with material or any query by the Assessing Officer then on such a disallowance no penalty u/s.271(1)(c) can be levied. Moreover, the disallowance of expenses were beyond the scope of limited scrutiny for which assessee's case was selected and hence it cannot be held that simply because assessee's case was selected for scrutiny, therefore, assessee was persuaded for offering the disallowance of expenses. Under these facts and circumstances of the case, the penalty levied by the Assessing Officer is directed to be deleted. The other issue raised by the assessee in respect to any specifying of charge before initiating of penalty proceedings is not adjudicated as it has become purely academic.

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

Order pronounced in the open Court on 30th July, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 30.07.2019

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