

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “डी”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘D’, NEW DELHI**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री ओ. पी.कांत, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER & SH.O.P.KANT, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.571/Del/2016
निर्धारण वर्ष / Assessment Year: 2006-07

Smt. (Dr.) Jatinder Bhatia,
C-1/2, Sector-31, Noida.
PAN-ACCPB1084H.

.....अपीलार्थी / Appellant

vs

The ACIT,
Circle-1, Noida.

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Gagan Kumar, Adv. &
Sh. Amit Kaushik, Adv.
प्रत्यर्थी की ओर से / Respondent by : Sh. Sanjog Kapoor, Sr.DR

सुनवाई की तारीख / Date of Hearing: 28.11.2019	घोषणा की तारीख / Date of Pronouncement: 29.11.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-1, Noida dated 30.11.2015 relating to assessment year 2006-07 against penalty levied under section 271(1)(c) of the Income-tax Act, 1961 (in short “Act”).

2. The preliminary issue raised in the present appeal is against the non-recording of satisfaction by the Assessing Officer while initiating the penalty proceedings u/s 271(1)(c) of the Act.

3. On the perusal of record and after hearing both the authorized representatives, we find that the issue raised by the assessee vide Ground of appeal No.2 before us is the jurisdictional issue and we proceed to decide the same. The Assessing Officer had completed the assessment u/s 143(3) of the Act in which the long term capital gain in the hands of the assessee were recomputed. The second addition which was made was on account of repayment of unsecured loans being out of undisclosed funds available with the assessee. While making both these additions, the Assessing Officer added the amount and observed “.....for which penalty proceedings u/s 271(1)(c) are being initiated separately.” The AO has failed to record the satisfaction as to which limb of section 271(1)(c) of the Act has not been fulfilled by the assessee. The issue thus arises is that in the absence of recording such satisfaction, the penalty proceedings are to be held to be correctly initiated.

4. Penalty for concealment is leviable where the assessee had either concealed its income or furnished inaccurate particulars of income. The AO while completing the assessment has to record satisfaction in this regard, in order to show cause the assessee as to which limb to section 271(1)(c) of the Act has not been satisfied by it. This is the basic

condition of the aforesaid section. On perusal of the assessment order passed for the instant assessment year reflects no such satisfaction has been recorded. In the absence of the same, the assessee was not in a position to meet the requirements of the section. Merely, an order issuing notice u/s 274 r.w.s 271(1)(c) of the Act do not meet the conditions of the said initiation of penalty proceedings. In the absence of the same, there is no merit in the penalty order passed in the case. In this regard, we find support from the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Shri Samson Perinchery (2017) 392 ITR 4 (Bom). We hold that in the absence of recording proper satisfaction, while initiating the penalty proceedings u/s 271(1)(c) of the Act, order passed u/s 271(1)(c) of the Act suffers from infirmity. Hence, the same is cancelled. Ground of appeal raised by the assessee are thus allowed.

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

Order pronounced in the open court on 29th day of November, 2019.

Sd/-

(O.P.KANT)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली / दिनांक Dated : 29th November, 2019.

* Amit Kumar *

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi