

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.1239/Mum/2018
(Assessment Year :2012-13)**

Royal Associates 2 nd Floor, Laxmi Sagar Apartment Shiv Mandir Road Ambernath-421 501	Vs.	ACIT, Circle-2 2 nd Floor Mohan Plaza Wayale Nagar Khadakpada Kalyan (W)
PAN/GIR No.AAKFR9661C		
Appellant)	..	Respondent)

Revenue by	Shri Kamal Mangal, JCIT-DR
Assessee by	None
Date of Hearing	15/01/2020
Date of Pronouncement	22/01/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against order of the Ld. Commissioner of Income Tax (Appeals)–03, Thane, dated 15/12/2017 and it pertains to Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal.

1) *On the facts and in the circumstances of the case and in law the Commissioner of Income tax- (Appeals) - 3, Thane [hereinafter referred to as CIT(A) erred .In upholding the penalty u/s 271 (1) (c) amounting to Rs. 8,52,840/- made by assessing officer (hereinafter referred to as the A.O.)by ignoring the fact that notice u/s. 274 r.w.s 271 {1} (c) was bad in law as A.O was not clear about the charge for levy of penalty u/s. 271(1) (c).*

2) *On the facts and in the circumstances of the case and in law the CIT(A) erred in confirming the penalty u/s 271 {1} (c) amounting to Rs,*

8,52,840/- made by the A.O, by neither bringing on record any evidence that an amount of Rs, 2,7,60,000/- is on money nor made verification of the flat buyers and without bringing on record any evidence that appellant concealed any particulars of income.

3) On the facts and in the circumstances of the case and in law the CIT(A) erred in confirming the penalty u/s 271 (1) (c) amounting to Rs. 8,52,840/- made by the AO. on the basis of suspicion and guess work, without pointing out any defect from the explanation of the appellant and by ignoring the fact that its nature s source were accepted by survey team.

4) On the facts and in the circumstances of the case and in law the CIT(A) erred in upholding the penalty u/s 271 (1) (c) amounting to Rs. 8,52,840/- made by A.O, on the ground that no quantum appeal was filed by the appellant firm by ignoring the fact that there are 20 partners, the project was completed and in order to avoid pain of litigation, the partners decided not to file quantum appeal.

5) The reasons mentioned in the order are contrary to facts and law.

6) The appellant craves leave to add, amend, modify, and alter all or any grounds of appeal at the time of hearing.

3. The brief facts of the case are that the assessee has filed its return of income for AY 2012-13 on 27/09/2012, declaring total income at Rs. 2,52,27,610/-. In this case, a survey action u/s 133A of the I.T.Act, 1961 was carried out at the business premises of the assessee firm on 02/02/2012. During the course of survey action, a loose paper bundle containing receipt of on-money was found. Accordingly, a statement of Shri Vikramraj Ajitsingh chauhan, one of the partners was recorded on oath u/s 131 of the I.T.Act, on 02/02/2012, where he had admitted receipt of on-money of Rs. 3,38,74,015/- and out of which an amount of Rs. 27,60,000/- has been deposited in the bank account of the firm. During the course of assessment proceedings, the Ld. AR of the assessee was asked to as to why the amount of Rs. 27,60,000/- deposited in bank account of the assessee's firm should not be added to the total income of the assessee. In response to the same, the Ld. AR of the

assessee submitted that the partner of the firm has introduced capital of Rs. 27,60,000/- and the same had been accounted in the books of accounts, which is source for cash deposit to bank account of firm. The Ld. AO did not find merit in the submissions of the assessee and accordingly, made additions of Rs. 27,60,000/- towards unrecorded sales (on-money). Thereafter, penalty proceedings u/s 271(1)(c) of the I.T.Act, 1961 was initiated for concealment of particulars of income, and after considering relevant submission of the assessee levied penalty of Rs. 8,52,840/-, which is 100% of tax sought to be evaded.

4. Aggrieved by the penalty order, the assessee has preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed elaborate written submissions on the issue along with certain judicial precedents, which has been reproduced at para 4 on page 4 to 15 of Ld.CIT(A) order. The sum and substance of arguments of the assessee before the Ld.CIT(A) are that cash deposits found in bank account of firm is out of capital introduced by the partner, which has been recorded in books of accounts and explained before the Ld. AO. Therefore, the Ld. AO was incorrect in levy of concealment penalty u/s 271(1)(c) of the I.T.Act, 1961. The Ld.CIT(A) after considering relevant facts and also taken note of facts gathered during the course of survey u/s 133A, including statement of oath recorded from the partner, came to the conclusion that when, unrecorded sales found during the course of survey was confronted to the partner, he had admitted that out of unrecorded sales a sum of Rs. 27,60,000/- has been deposited in bank account of the firm. Accordingly, he opined that the arguments of the assessee that cash deposits found in bank account of the firm is out of capital

contribution of partner is incorrect. Therefore, he opined that there is no error in levy of penalty u/s 271(1)(c) for concealment of particulars of income . Accordingly, confirmed penalty levied by the Ld. AO and dismissed, appeal filed by the assessee. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

5. None appeared for the assessee. We have heard the Ld. DR, perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has levied penalty for concealment of particulars of income, in respect of additions of Rs. 27,60,000/- made towards on-money receipt, which is found deposited in bank account of the firm, on the basis of statement of one of the partners of the firm during the course of survey proceedings. According to the Ld. AO, although the assessee has explained that cash deposits found in bank account of the firm is out of capital contribution from the partner, but such capital contribution is also out of unrecorded sales of firm (on-money). Therefore, the claim of the assessee that cash deposits in bank account has been recorded in books of accounts and explained is found to be incorrect. Further, during the course of survey, in the statement recorded u/s 131 of the Act, the partner of the firm has categorically stated that the firm has received on- money and out of which an amount of Rs. 27,60,000/- has been deposited in the bank accounts of the firm and the same has been accounted for as capital introduced by the partner of the firm. Therefore, we are of the considered view that the arguments of the assessee that cash deposits found in bank account of the firm is out of capital contribution from the partners and it is nothing to do with on-money received by firm found to be incorrect. Accordingly, we are of the

considered view that there is no error in the findings recorded by the Ld. AO, as well as the Ld.CIT(A) in levying penalty u/s 271(1)(c) of the I.T.Act, 1961, for concealment of particulars of income, because the assessee has clearly concealed particulars of its income. Insofar as, the grounds taken by the assessee challenging the validity of notice issued u/s 274 r.w.s. 271(1)(c) of the Act, 1961, we find that the Ld. AO has arrived at clear satisfaction during the course of assessment proceedings, before initiation of penalty proceedings and charged the assessee for concealment of particulars of income. Further, the penalty proceedings has been initiated for concealment of particulars of income and finally penalty has been levied for concealment of income. Therefore, we are of the considered view that there is no merit in ground taken by the assessee in light of notice issued u/s 274 r.w.s. 271(1)(c) of the I.T.Act, 1961, because once a proper satisfaction has been recorded before initiation of penalty proceedings or during the course of assessment proceedings, then subsequent issue of notice u/s 274 r.w.s. 271(1)(c) of the I.T.Act, 1961, is a formality to communicate the assessee, the proceedings initiated under the Act. Hence, we reject ground taken by the assessee challenging validity of notice issued u/s 274 r.w.s. 271(1)(c) of the I.T.Act, 1961.

6. In this view of the matter and considering facts and circumstances of this case, we are of the considered view that there is no error in findings recorded by the Ld.CIT(A) in confirming penalty levied u/s 271(1)(c) of the I.T.Act, 1961. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and dismissed, appeal filed by the assessee.

7. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on this 22 /01/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated : 22/01/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai