

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

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

सुश्री सुषमा चोवला उपध्यक्ष एवम् डॉ. बी आर आर कुमार, लक्ष्य सदस्य कसमक्ष

**BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT**

**&**

**DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं / ITA No.2310/Del/2016

निर्धारण वर्ष / Assessment Year 2007-08

Pramod Kumar,  
L-5 Hauz Khas Enclave  
New Delhi-110016  
PAN-AMOPK4488L  
vs

.....अपीलार्थी / Appellant

ACIT,  
Najibabad,  
Dist. Bijnor  
UP-246763

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Pankaj Misshra, AR

प्रत्यर्थी की ओर से / Respondent by : Dr. Anjula Jain, Sr. DR.

सुनवाई की तारीख / Date of Hearing : 28.01.2020	घोषणा की तारीख / Date of Pronouncement: 31.01.2020
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, VP**

This appeal filed by the assessee is against the order of the CIT(A), Moradabad, dated 18/02/2016, relating to assessment year 2007-08 against penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (in short “the Act”).

2. The assessee has filed following grounds of appeal:-

- i. That the Ld. CIT(A) has erred in upholding the penalty of Rs.4,00,000/-, imposed by the Assessing Officer, invoking the provisions of section 271(1)(c) of the Act, 1961.*
- ii. That the Ld. CIT(A) has erred in upholding the penalty of Rs.4,00,000/- without looking into facts and circumstances of the case and relying on irrelevant judicial pronouncements.*
- iii. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.*

3. The only issue raised in the present appeal is against the levy of penalty under section 271(1)(c) of the Act. The assessee for the year under consideration, had filed the return of income declaring total income of Rs.21,62,786/-. The case of the assessee was taken for scrutiny. During the course of examination of the accounts of the assessee, it was noticed by the Assessing Officer that the assessee had credited a sum totaling Rs.2,12,000/- to his capital account with the narration, 'Gift received'. The assessee explained that it had received gift on the occasion of his marriage anniversary. The Assessing Officer did not accept the same and sum of Rs.2,12,000/- was held to be chargeable in the hands of the assessee as 'income from other sources'. The Assessing Officer in para 4, after making the aforesaid addition observed "action under section 271(1)(c) of the Act is initiated on this score". Further, an addition was made under section 68 of the Act of Rs.10,65,000/-. The Assessing Officer after making the said addition also observed "action under section 271(1)(c) of the Act is initiated on this count" also. Thereafter, penalty proceedings were initiated. The Assessing Officer held the assessee to

have defaulted and was liable for penalty under section 271(1)(c) read with explanation 1(A) and (B) and penalty of Rs.4,00,000/- was levied on the assessee.

4. The said levy of penalty was upheld by the CIT(A). The assessee is in appeal against the order of the CIT(A).

5. The issue which is raised before us is whether the penalty levied in the present case for non-recording of satisfaction in the assessment order is justified or not.

6. The Ld. AR for the assessee strongly opposed the levy of penalty for concealment and pointed out that in the absence of proper recording of satisfaction as to which limb of section 271(1)(c) of the Act has not been complied with by the assessee, there was no merit in the aforesaid levy of penalty. He placed reliance on the ratio laid down by the Delhi Bench of the Tribunal in Sunita Agarwal in ITA No.2309/Del/2016, order dated 18/12/2018.

7. The Ld. DR for the Revenue on the other hand, pointed out that once the penalty proceedings have been initiated, there was deemed satisfaction in the case and he referred to the provisions of section 271(1B) of the Act.

8. We have heard the rival contention and perused the record. The issue which is arising the present appeal is against the levy of penalty under section 271(1)(c) of the Act of non-recording of proper satisfaction by the Assessing Officer while passing the assessment order. The Assessing Officer while

framing the assessment in the hands of the assessee records satisfaction for initiation of penalty proceedings by observing “action under section 271(1)(c) of the Act is initiated on this score”. Under the provisions of section 271(1)(c) of the Act, it is incumbent upon the Assessing Officer to record satisfaction to the effect that the assessee has either concealed its income or furnished inaccurate particulars of income for initiating penalty proceedings under section 271(1)(c) of the Act. Such recording of satisfaction in the case of assessee is missing and consequently, the action of the Assessing Officer in initiating penalty proceedings is invalid. In this regard, we find support from the ratio laid down by the Hon’ble Bombay High Court in CIT Vs. Shri Samson Perinchery in Income Tax Appeal No.1154 of 2014 with other Income Tax Appeals Nos.953 of 2014, 1097 of 2014 and 1226 of 2014, judgment dated 05.01.2017, wherein it was held that where initiation of penalty is on one limb and the levy of penalty is on other limb, then in the absence of proper show cause notice to the assessee, there is no merit in levy of penalty

9. Applying the said principle as laid down by the Hon’ble Bombay High Court in CIT Vs. Shri Samson Perinchery (supra), the requirement of the Act is to initiate penalty proceedings on account of non satisfaction of one limb especially in a case where one addition is sought to be made, for levy of penalty under section 271(1)(c) of the Act. As referred to by us in the earlier paras and also in this para, we find that there is total non recording of any satisfaction as to which limb of section 271(1)(c) of the Act has not been complied with by the assessee and in the absence of such show cause notice, where the Assessing Officer has not pointed out that the assessee has

furnished inaccurate particulars of income or had concealed its income, then no penalty under section 271(1)(c) of the Act can be levied.

10. The learned Departmental Representative for the Revenue has placed reliance on the provisions of section 271(1B) of the Act and pointed out that once penalty proceedings has been initiated, then there is deemed satisfaction in the case. In this regard, we place reliance on the ratio laid down by the Pune Bench of Tribunal in Nandkishor Tulsidas Katore Vs. ACIT (supra), wherein reference was made to substantial questions raised before the Hon'ble High Court of Karnataka in Karnataka in CIT Vs. SSA'S Emerald Meadows (2016) 73 taxmann.com 241 (Kar) i.e. the amendment to section 271(1B) of the Act with retrospective effect and it was observed as under:-

*“16. Another aspect raised by the learned Authorized Representative for the assessee before us was in respect of decision of Hon'ble High Court of Karnataka in CIT Vs. SSA'S Emerald Meadows (supra). The substantial questions which were raised before the Hon'ble High Court are as under:-*

- “(1) Whether, omission of 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?”*
- “(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under section 274 r.w.s. 271(1)(c) is bad in law and invalid despite the amendment of Section 271(1B) with retrospective effect and by virtue of the amendment, the Assessing Officer has initiated the penalty by properly recording the satisfaction for the same?”*

*17. The Hon'ble High Court had allowed the claim of assessee where the Assessing Officer had not explicitly mentioned that as to whether the penalty proceedings were initiated for concealment of*

*income or for furnishing inaccurate particulars of income, suffers from infirmity even if it is established that the assessee had concealed the income in the facts and circumstances of the case. The Apex court has dismissed the SLP filed by the Department. Applying the said principle, we hold that even if it is established that the additional income is on account of concealment of income but while recording satisfaction for initiating penalty proceedings, the Assessing Officer should explicitly mentions as to whether penalty is being initiated for concealment or income or for furnishing of inaccurate particulars of income. In the absence of the same, notice issued in such circumstances, which also is not clear as to which limb of section 271(1)(c) of the Act is attracted, stands vitiated and the penalty order passed consequent to such notice is invalid in law. Accordingly, we delete the penalty levied under section 271(1)(c) of the Act in the case of assessee. The ground of appeal No.8 raised by the assessee is thus, allowed. Other grounds of appeal raised on merits of issue become academic and also additional ground of appeal.”*

11. Before parting, we may also refer to the decision of the Hon'ble High Court of Delhi in (1) Ms. Madhushree Gupta (2) British Airways Profit and Loss Account Vs. Union of India and Another (2009) 317 ITR 107 (Del), wherein the retrospective operation of section 271(1B) of the Act was challenged being violative of Article 14 of the Constitution. The Hon'ble High Court of Delhi upholding the retrospective operation of sub-section (1B) held that the issue of discernability of satisfaction was to be arrived at by the Assessing Officer during the course of proceedings before him. Section 271(1)(c) of the Act had to be read in consonance with section 271(1B) of the Act. The Hon'ble High Court of Delhi held that prima facie satisfaction of the Assessing Officer that the case may deserve the imposition of penalty should be discernible from the order passed during the course of proceedings. Further, referring to the provisions of the Act while initiating penalty proceedings, the Court held that following pre-requisites should be there:-

*“Under section 271(1)(c) to initiate penalty proceedings the following pre-requisites should obtain:*

*(i) The Assessing Officer should be ‘satisfied’ that : (a) the assessee has either concealed particulars of his income; or (b) furnished inaccurate particulars of his income; or (c) infringed both (a) and (b) above.*

*(ii) This ‘satisfaction’ should be arrived at during the course of ‘any’ proceedings. These could be assessment, reassessment or rectification proceedings, but not penalty proceedings.*

*(iii) If ingredients contained in (i) and (ii) are present a notice to show cause under s. 274 of the Act shall issue setting out therein the infraction the assessee is said to have committed. The notice under s. 274 of the Act can be issued both during or after the completion of assessment proceedings, however, the satisfaction of the AO that there has been an infraction of cl. (c) of sub-s. (1) of s. 271 should precede conclusion of the proceedings pending before the Assessing Officer.*

*(iv) The order imposing penalty can be passed only after assessment proceedings are completed. The time frame for passing the order is contained in s. 275 of the Act. Due compliance would be required to be made in respect of the provisions of sections 274 and 275 of the Act.”*

12. Hence, we find no merit in the plea of the learned Departmental Representative for the Revenue.

13. In the facts of the present case, we find that the Assessing Officer has not recorded any satisfaction as to which limb of section 271(1)(c) of the Act has not been fulfilled and have not issued show cause notice in this regard and hence, initiation of penalty proceedings are bad in law.

14. In view of the aforesaid proposition, we find no merit in the levy of penalty under section 271(1)(c) of the Act where the initiation of penalty

proceedings is without recording of satisfaction. Accordingly, we delete the same. Hence, grounds of appeal raised by the assessee are allowed.

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

Order pronounced in the open court on 31<sup>st</sup> January 2020.

**Sd/-**  
**(Dr. B.R.R.KUMAR)**  
**लेखा सदस्य/ACCOUNTANT MEMBER**

**Sd/-**  
**(SUSHMA CHOWLA)**  
**उपाध्यक्ष /VICE PRESIDENT**

दिल्ली / दिनांक Dated : 31<sup>st</sup> January, 2020  
Shekhar, Sr. P.S.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(पील) / 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,**

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