

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

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH ‘G’, NEW DELHI

सुश्री सुषमा चवला, उपाध्यक्ष एवं डॉ. बी आर आर कुमार, लक्ष्य सदस्य का समक्ष

BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT

&

Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं/ ITA No. 145/Del/2017

निर्धारण वर्ष/Assessment Year. 2012-13

Urmilla Ghanshyam Dass Ghiraiya,
A-21, First Floor, Lok Vihar
Pitampura, Delhi-110034
PAN-ABUPG5671N
Vs

.....अपीलार्थी/Appellant

DCIT, Central Circle,
Karnal

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Sameer Kapoor, CA

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

सुनवाई की तारीख/ Date of Hearing : 30.01.2020	घोषणा की तारीख / Date of Pronouncement: 31.01.2020
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आदेश / ORDER

PER SUSHMA CHOWLA, VP

The present appeal filed by assessee is against order of CIT(A)-3, Gurgaon, dated 31.10.2016, relating to Assessment Year 2012-13, against penalty levied under section 271(1)(c) of the Income-tax Act, 1961 (in short ‘the Act’).

2. Following grounds of appeal raised by the assessee reads as under:-

1. *Whether the Ld. AO has erred in law and facts of the case by imposing penalty vide order dated 26.02.2016 without having jurisdiction, against the order under section 127(2) dated 18.02.2016.*
 2. *Whether the Ld. Assessing Officer has erred in law and facts of the case by imposing penalty u/s 271(1)(c) amounting to Rs. 24,21,080/- for the A.Y. 2012-13.*
 3. *The assessee retains the right to add/delete/modify any of the above grounds of appeal at any stage.*
3. The only issue raised in the present appeal is against the levy of penalty for concealment of income under section 271(1)(c) of the Act.
4. Briefly in the facts of the case, the husband of the assessee was travelling in route from Hisar to Delhi and was carrying cash of Rs.85 Lakhs. The said cash was confiscated by the police and statement of the husband of the assessee was recorded. He pointed out that the cash was out of sale of agricultural land. The assessee filed the return of income declaring income of Rs.87,86,200/- and agricultural income of Rs.40,920/-. Assessment was made in the hands of the assessee and capital gain was worked out on the sale of said land.
5. On perusal of the record and after hearing both the representatives, we find that the AO while completing the assessment, initiated penalty proceedings under section 271(1)(c) of the Act for concealing and furnishing of inaccurate particulars of income. The AO in the penalty order held that the assessee to have defaulted for concealing the income. The issue which arises is whether proper satisfaction has been recorded or not. It seems that

the AO had initiated penalty proceedings on both the limb of section 271(1)(c) of the Act.

6. Penalty for concealment is leviable either for concealing the income or for furnishing of inaccurate particulars of income. The AO while initiating the same has to record satisfaction in this regard. 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.

7. 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

para, we find that the penalty proceedings have been initiated both for concealing and furnishing of inaccurate particulars of income. In such circumstances, the penalty levied under section 271(1)(c) of the Act cannot stand for non-recording of proper satisfaction. Hence, the AO is directed to delete the penalty levied under section 271(1)(c) of the Act at Rs.24,21,080/- . Grounds of appeal raised by the assessee are allowed.

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

Order pronounced in the open court on 31st day of January, 2020.

Sd/-

Sd/-

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

(SUSHMA CHOWLA)
उपाध्यक्ष/VICE PRESIDENT

दिल्ली/दिनांक Dated : 31st 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. मुख्यआयुक्त/ The Pr. CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली/ DR, ITAT, Delhi
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सहायकरजिस्ट्रार,
आयकर अपीलीय अधिकरण , दिल्ली/ ITAT, Delhi