

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ "जी", दिल्ली में
**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं डॉ. बी आर आर कुमार, लेखा सदस्य के समक्ष
**BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT
&
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No. 1563/Del/2017
निर्धारण वर्ष / Assessment Year: 2011-12

M/s Sai Baba Habitat Pvt. Ltd.,
173, SFS Flats, Rajouri Appts,
Rajouri Garden, New Delhi
PAN-AAOCS5479G

.....अपीलार्थी/Appellant

vs.

ITO, Ward-7(1),
New Delhi

.....प्रत्यर्थी/Respondent

अपीलार्थी की ओर से /Appellant by : None

प्रत्यर्थी की ओर से /Respondent by : Sh. Abhishek Kumar, Sr. DR

सुनवाई की तारीख / Date of Hearing : 03.02.2020	घोषणा की तारीख / Date of Pronouncement: 21 .02.2020
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आदेश / ORDER

PER SUSHMA CHOWLA, VP

The appeal filed by assessee is against order of CIT(A)-22, New Delhi, dated 20.01.2017 relating to assessment year 2011-12 against penalty levied u/s 271(1)(c) of the Act.

2. An adjournment application was moved but the person appearing had no authority of letter to appear. We find that the issue raised in the present appeal is squarely covered and hence we proceed to decide the same after hearing learned DR for the Revenue and ex-parte qua the assessee. The only issue raised in the present appeal is against levy of penalty under section 271(1)(c) of the Act.

3. We have heard the learned DR for the Revenue and perused the record. The perusal of the assessment order reflects the AO to have made addition of Rs. 1.58 Crores on account of unexplained cash credits and Rs. 11,50,000/- on account of share application money. While making the aforesaid additions, the AO has failed to record any satisfaction for initiating the penalty proceedings under section 271(1)(c) of the Income Tax Act. Thereafter, the AO passes the penalty order under section 271(1)(c) of the Act for furnishing inaccurate particulars of income as per the provisions of section 271(1)(c).

4. 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.

5. Where the AO has failed to record any satisfaction during the course of assessment proceedings for initiating the penalty proceedings against the assessee by way of show causing as to which limb of section 271(1)(c) of the Act has not been fulfilled by the assessee, the penalty order passed under section 271(1)(c) of the Act suffers from infirmity. Hence the same is cancelled. The grounds of appeal raised by the assessee are allowed.

6. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 21st day of February, 2020.

Sd/-

(Dr. B.R.R. KUMAR)

लेखा सदस्य/ACCOUNTANT MEMBER

दिल्ली / दिनांक Dated : 21st February, 2020.

SH

Sd/-

(SUSHMA CHOWLA)

उपाध्यक्ष/VICE PRESIDENT

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