

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Though Video Conferencing)

ITA No. 5659/Del/2019  
(Assessment Year : 2014-15)

Shri Sanjeev Garg, 580, Sector : 12, HUDA, Panipat-132 103 [Haryana] <b>PAN: ACMPG6282C</b>	Vs.	Income Tax Officer, Ward : 4, Panipat.
(Appellant)		(Respondent)

Assessee by :	Ms. Rano Jain, Adv., Ms. Mansi Jain, AR; & Mr. Priyanshi Singha, AR.
Revenue by:	Ms. Rakhi Vimal, Sr. DR
Date of Hearing	16/09/2020
Date of pronouncement	28/09/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by Mr. Sanjeev Garg, assessee-appellant against the order of the Id CIT(Appeals), Karnal, dated 24.04.2019 for Assessment Year 2014-15 wherein penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 ('the Act') by Income Tax Officer, Ward 4, Palika Bazar, Panipat, vide order dated 20<sup>th</sup> March, 2018 of Rs.7,16,880/- was confirmed.
2. The assessee has raised the following grounds of appeal:-

*"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*

*2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty of Rs. 7,16,880/- levied by the AO in the under section 271(1)(c) of the Income Tax Act.*

*3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the*

*AO in levying penalty under section 271(1)(c) of the Act without appreciating the fact that there is no addition to the returned Income of the assessee.*

*4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in levying penalty under section 271(1)(c) of the Act without appreciating the fact that the amount of tax due has already been paid so as to end dispute with the revenue and there was no contumacious conduct on the part of the assessee, which is necessary for levy of penalty under section 271(1)(c) of the Act..*

*5. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in not appreciating that the notice under section 271(1)(c) and the order passed in consequence thereto are bad and liable to be quashed in the absence of any specific allegation in respect of concealment of particulars of income or furnishing of inaccurate particulars.*

*6. The appellant craves leave to add, amend or alter any of the grounds of appeal."*

3. Brief facts of the case shows that assessee is an Individual, filed return at Rs.12,85,950/- for Assessment Year 2014-15 on 30.07.2014. Later on some information was received about the bogus entry of profit / gain obtained by the assessee. Statement of the assessee was recorded under Section 131 of the Act by The DDIT (Investigation), Panipat on 15.07.2015 in which assessee admitted receipt of bogus long term capital gain of Rs.23,20,000/-. Therefore, proceedings under Section 147 of the Act was initiated and notice under Section 148 of the Act was issued on 27.01.2017. In response to the above notice assessee filed his return of income on 16.02.2017 at Rs.36,05,950/-. In the return in response to re-opened proceedings assessee included the above income in his return of income and paid the tax due thereon. Consequent to assessment order under Section 147 read with Section 143(3) of the Act was passed on 24.07.2017 at the returned income of the assessee. Along with the assessment order, the Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act. Notice under Section 274 read with Section 271(1)(c) of the Act dated 24.07.2017 was issued without striking of any of the twin charges provided under that Section. In response to the notice assessee submitted that it has already included in

total income escaped income and has also deposited the Income Tax thereon. However, assessee contested that penalty is not leviable as the income returned was the income assessed. Assessee submitted that there is no concealment of any income. The Id. Assessing Officer rejected the explanation of the assessee and held that the assessee has declared the income pursuant to investigation and issue of notice under Section 148 of the Act. Therefore, he passed order under Section 271(1)(c) of the Act on 20.03.2018 levying penalty of Rs.7,16,880/- for concealment of income.

4. Assessee challenged the above order before the Id. CIT (Appeals). The assessee also relied on several judicial precedents over and above stating the facts of the case. The Id. CIT (Appeals) confirmed the penalty by the order under challenge.
5. The Id. Authorized Representative submitted that penalty notice issued by the Id. Assessing Officer was not sustainable on merit as assessee has already disclosed the escaped income in the return of income pursuant to notice under Section 148 of the Act. She also referred to certain judicial decisions of various Co-ordinate Benches. She also submitted that the notice issued under Section 274 has been issued without mentioning any of the charges and as the Assessing Officer has not cancelled / strike off the twin charges, the penalty is bad in law. She referred to the order of the Hon'ble Karnataka High Court in Pr. CIT Vs. SSA's Emerald Meadows (2016) 73 Taxman.com 241 (Kar.) to support her case.
6. The Id. Departmental Representative stated that in the assessment order the Assessing Officer has clearly mentioned that assessee has concealed particulars of income and, therefore, even if one of the charges has not been struck off in the notice under Section 274 of the Act, the initiation of the penalty is valid.
7. Both the parties referred to several judicial precedents on either side which are considered.
8. We have carefully considered the rival contentions and perused the orders of the lower authorities. In this case at the time of initiation of the

penalty proceedings, show cause notice under Section 274 read with Section 271(1)(c) of the Act was issued on 24.07.2017 wherein the Id. Assessing Officer did not strike off any of the twin charges on which penalty is initiated. Hon'ble Delhi High Court in Pr. CIT Vs. Sahara India Life Insurance Co. Ltd. In ITA. No. 475/2019 has categorically held that penalty is not sustainable if none of the twin charges in notice under Section 274 of the Act are cancelled or strike off. Therefore, respectfully following the decision of the Hon'ble Delhi High Court and also of Hon'ble Karnataka High Court in 73 Taxman.com 241 (supra) the penalty levied by the Id. Assessing Officer is not sustainable in law, hence we reverse the orders of the lower authorities and cancel the penalty levied by the Id. Assessing Officer of Rs.7,16,880/- under Section 271(1)(c) of the Act. Accordingly ground No. 5 of the appeal is allowed.

9. In view of the above finding, all other grounds of appeal contested on the merits of the case are merely academic in nature and, therefore, same are not adjudicated.
10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on : **28/09/2020.**

Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: **28/09/2020.**

\*MEHTA\*

Copy forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT (Appeals)
5. DR, ITAT,

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	17.09.2020
Date on which the typed draft is placed before the dictating member	17.09.2020
Date on which the typed draft is placed before the other member	28.09.2020
Date on which the approved draft comes to the Sr. PS/ PS	28.09.2020
Date on which the fair order is placed before the dictating member for pronouncement	28.09.2020
Date on which the fair order comes back to the Sr. PS/ PS	28.09.2020
Date on which the final order is uploaded on the website of ITAT	28.09.2020
date on which the file goes to the Bench Clerk	28.09.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	