

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 3492/Del/2018
(Assessment Year: 2012-13)

Ashok Mishra, Pradeep & Co., Tax Advocates, 7, Navyug Market, Ghaziabad PAN: AATPM7594E	Vs.	DCIT, Circle-1, Ghaziabad
(Appellant)		(Respondent)

Assessee by :	Shri Satyajit Goel, Adv Shri Prateek Gupta, Adv
Revenue by:	Shri Sanjay Tripathi, Sr. DR
Date of Hearing	10/11/2020
Date of pronouncement	25/11/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A), Ghaziabad dated 27.03.2018 for the Assessment Year 2012-13, wherein, the penalty levied by the Id AO as per order u/s 271(1)(c) of the Act dated 06.02.2017 of Rs. 1609686/- is confirmed.
2. The assessee has raised the following grounds of appeal:-
 - "1. *On the facts and circumstances of the case the order of Ld. CIT(A) is bad in both in the eyes of law and on facts.*
 2. *That on the facts and circumstances of the case the Ld. CIT(A) has erred in law in partly upholding the order passed by Ld. A.O. u/s. 271(l)(c) of the Income Tax Act, 1961.*
 3. *That on the facts and circumstances of the case the Ld. CIT(A) has erred in law in imposing penalty before concealment of income on the disallowances of deduction claimed u/s 54 of the Act even when the very fact was disclosed in the Income Tax Return.*
 4. *That on facts and circumstances of the case the Ld. CIT(A) has erred in law in levying the penalty on account of disallowance of deduction amounting to Rs. 45,25,339/- claimed u/s 54 of the Income Tax Act, 1961.*

5. *That on facts and circumstances of the cases the Ld. CIT(A) has erred in law in imposing penalty on a debatable issue and the same is untenable in the eyes of law.*
 6. *That on the facts and circumstances of the case the Ld. CIT(A) erred in law in upholding the penalty levied by the Ld. AO of Rs. 25,956/- on account of deemed income assessed u/s 24 of the Income Tax Act, 1961.*
 7. *That on facts and circumstances of the cases the Ld. CIT(A) has erred in law in imposing penalty on deemed income which is discretionary in nature and the same is untenable in the eyes of law.”*
3. The brief facts of the case show that assessee is an individual, doctor by profession, CMO, Lucknow. The assessee has filed his return of income on 01.03.2013 declaring income of Rs. 1353240/-. The case of the assessee was taken up for scrutiny. It was found that assessee has sold his house for a sale consideration of Rs. 2,01,85,000/-. Further, assessee has claimed the utilization of the above fund in purchasing another flat at Noida for Rs. 11793500/- and one more flat at Noida for Rs. 10898535/-. The assessee was asked that why income of one more self occupied house property should not be charged and accordingly addition of Rs. 84000/- was made. Further, the addition of Rs. 6 lakhs was made towards the construction expenses in the flat. Further, the disallowance u/s 54 with respect to two flats was disallowed considering only one flat being eligible, therefore, addition under the head capital gain was made of Rs. 4525339/-. Accordingly, the total income of the assessee was computed of Rs. 6108896/-. The assessment u/s 143(3) of the Act was passed on 23.12.2014. As there are substantial addition penalty was initiated by the Id AO u/s 271(1)(c) of the Act. Consequently, the show cause notice was issued along with assessment order.
 4. The assessee filed an appeal against the quantum order wherein, the disallowance were confirmed by the first appellate authority.
 5. IN Penalty proceedings , In response to show cause notice dated 22.12.2016 the assessee submitted a detailed reply on 28.12.2016. However, the Id AO levied a penalty u/s 271(1)(c) of the Act stating that assessee was found to have furnished inaccurate particulars of his income and penalty of Rs. 1609688/- as per order dated 23.12.2014. The

assessee preferred an appeal before the Id CIT(A) who confirmed the same as per order dated 27.03.2018, however, he reduced the penalty on capital gain as rate of tax would have been 20% instead of 30% computed by the Id AO for levy of penalty.

6. The assessee aggrieved preferred appeal before us.
7. Coming to the first ground of appeal the Id AR referring to his paper book submitted that notice u/s 271(1)(c) read with section 274 of the Act was issued by the Id AO on 22.12.2014 wherein the Id AO has not struck off any of the twin charges i.e. Concealment of income or furnishing inaccurate particulars of income and therefore, the penalty u/s 271(1)(c) is not at all leviable being the same is bad in law. For this proposition he relied upon the decision of Hon'ble Delhi High Court in case of Sahara India Life Insurance Corporation Ltd in ITA No. 475/2019 dated 02.08.2019. He did not argue in any limb on the merits of the penalty.
8. The Id DR on the merits relied upon the orders of the lower authorities. On the issue of notice he submitted that assessee was given proper opportunity of hearing, the notice issued is a non statutory notice therefore, non striking of relevant limb cannot invalidated the penalty proceedings.
9. We have carefully considered the rival contentions and perused the orders of the lower authorities. At the time of passing of the order u/s 143(3) of the Act the Id AO has not recorded satisfaction while making an addition that whether the assessee has concealed the income or furnished inaccurate particulars of income. The assessment order is silent on the same. In the penalty notice issued u/s 274 read with section 271(1)(c) dated 22.12.2014 furnished at page 1 of the paper book clearly shows that the Id AO has not struck off any of the twin charges i.e. concealment of particulars of income or furnishing accurate particulars of income. In the penalty order the Id AO has levied the penalty stating that assessee has furnished inaccurate particulars of income. In the present case the assessee was not made aware about the charge against the assessee and penalty was levied on one of the charges. Thus, the issue is clearly covered in favour of the assessee by the decision of the Hon'ble Delhi

High Court in case of Sahara Life Insurance Co. Ltd in ITA No. 475/2019 dated 02.08.2019 wherein, the Hon'ble High Court held following the order of the Hon'ble Karnataka High Court in 73 Taxmann.com 241 that the penalty orders would be bad in law if it did not specify in the notice which limb of section 271(1)© the penalty proceedings have been initiated. If the notice is read with the decision of the Hon'ble High court, the penalty orders and its confirmation does not survive. Further, from the order of the Id AO it is also not discernable the reason for initiating the penalty proceedings. Therefore, respectfully following the decision of Hon'ble Delhi High Court in case of Sahara India Life Insurance Corporation Ltd (Supra) we set aside the orders of the lower authorities with respect to penalty levied of Rs. 1609686/-. The AO is directed to delete the penalty accordingly.

10. In the result, appeal of the assessee in ITA No. 3492/Del/2018 is allowed. Order pronounced in the open court on 25/11/2020.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 25/11/2020
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	25.11.2020
Date on which the typed draft is placed before the dictating member	25.11.2020
Date on which the typed draft is placed before the other member	25.11.2020
Date on which the approved draft comes to the Sr. PS/ PS	25.11.2020
Date on which the fair order is placed before the dictating member for pronouncement	25.11.2020
Date on which the fair order comes back to the Sr. PS/ PS	25.11.2020
Date on which the final order is uploaded on the website of ITAT	25.11.2020
date on which the file goes to the Bench Clerk	25.11.2020
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	