

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC-2', NEW DELHI**

**Before Sh. Bhavnesh Saini, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 4095/Del/2019 : Asstt. Year : 2009-10**

**ITA No. 4096/Del/2019 : Asstt. Year : 2009-10**

Sukhpal Singh, KA-32, Kavi Nagar, Ghaziabad, U.P.-201002	Vs	Income Tax Officer, Ward-2(3), Ghaziabad-201002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. CWZPS2745H</b>		

**Assessee by : Sh. Deepanshu Aggarwal, Adv.  
Revenue by : Sh. Farat Khan, Sr. DR**

**Date of Hearing: 11.02.2021**

**Date of Pronouncement: 12.03.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeals have been filed by the assessee against the orders of the Id. CIT(A), Ghaziabad dated 27.03.2019 and 28.03.2019.

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2. The relevant facts of the case are that the AO received information from the bank as part of Annual Information Return (AIR) that the assessee has deposited cash amounting to Rs.20,39,900/- in his savings bank account.

3. The cash deposits have been made on 28.05.2008 of Rs.19,90,000/- and Rs.49,900/- on 25.10.2008.

4. The assessee explained that the amounts have been received out of the sale proceeds of the land which has been sold as under:

S.No.	Date of Registry	Sale Consideration	Sold by
1	28.05.2008	Rs. 85,000/-	Shri Vijay Singh
2	28.05.2008	Rs. 81,000/-	Shri Vijay Singh
3	28.05.2008	Rs. 65,000/-	Shri Vijay Singh
4	28.05.2008	Rs. 1,26,000/-	Shri Vijay Singh
5	28.05.2008	Rs. 1,28,000/-	Shri Vijay Singh
6	28.05.2008	Rs. 1,26,000/-	Shri Vijay Singh
7	28.05.2008	Rs. 63,000/-	Shri Vijay Singh
8	04.10.2008	Rs. 1,01,000/-	Shri Brijeshwar and Shri Sukhpal
9	05.07.2008	Rs. 1,26,000/-	Shri Brijeshwar and Shri Sukhpal
10	05.07.2008	Rs. 1,26,000/-	Shri Brijeshwar and Shri Sukhpal
11	05.07.2008	Rs. 1,26,000/-	Shri Brijeshwar and Shri Sukhpal
12	04.10.2008	Rs. 1,45,000/-	Shri Brijeshwar and Shri Sukhpal
13	04.10.2008	Rs. 1,68,000/-	Shri Brijeshwar and Shri Sukhpal
14	24.10.2008	Rs. 1,68,000/-	Shri Brijeshwar and Shri Sukhpal
15	24.10.2008	Rs. 1,20,000/-	Shri Brijeshwar and Shri Sukhpal

Details of purchasers:

S.No.	Name of Seller	Amount	Date	MT (Area)	Purchaser
1	Vijay Pal Singh	85000.00	28.05.2008	56.02	Smt. Ram Wati W/o Ramji Lal
2	Vijay Pal Singh	81000.00	28.05.2008	53.87	Smt. Maju Devi W/o Vishnu Kumar
3	Vijay Pal Singh	65000.00	28.05.2008	43.10	Smt. Sangeeta W/o Pravender Kumar
4	Vijay Pal Singh	126000.00	28.05.2008	83.61	Smt. Sangeeta Dubey W/o Devi Prakash Dubey
5	Vijay Pal Singh	128000.00	28.05.2008	84.86	Chander Bhushan Mohan S/o Harbans Lal Mohan
6	Vijay Pal Singh	126000.00	28.05.2008	83.88	Smt. Rekha Sharma W/o Sh. Rajesh Sharma
7	Vijay Pal Singh	63000.00	28.05.2008	41.80	Smt. Maya Devi W/o Sh. Tej Pal Singh
8	Brijeshwar & Sukh Pal Singh	101000.00	04.10.2008	50.16	Smt. Virwati W/o Sh. Kharan Singh
9	Brijeshwar & Sukh Pal Singh	126000.00	05.07.2008	83.88	Madan Singh S/o Beg Raj

10	Brijeshwar & Sukh Pal Singh	126000.00	05.07.2008	83.88	Smt. Meenakashi Devi W/o Yeatendra Pal Singh
11	Brijeshwar & Sukh Pal Singh	126000.00	05.07.2008	83.88	Smt. Raj Bala S/o Bhram Pal Singh
12	Brijeshwar & Sukh Pal Singh	145000.00	04.10.2008	72.30	Smt. Rekha Devi W/o Harsaran Tyagi
13	Brijeshwar & Sukh Pal Singh	168000.00	04.10.2008	83.61	Smt. Sangeet Tiwari W/o Sh. Ajay Kumar Tiwari
14	Brijeshwar & Sukh Pal Singh	120000.00	24.10.2008	59.92	Rishi Kumar S/o Ragubir prasad
15	Brijeshwar & Sukh Pal Singh	168000.00	24.10.2008	83.88	Smt. Savitri Devi W/o Deewan Singh
	Total	1754000.0		1048.65	

5. The assessee explained that, the assessee along with his brothers sold the inherited family property and also explained that the cash received out of such sale transaction has been sent to Vijay Singh his brother who is at Pune by way of demand draft and the assessee has submitted the bank statement.

6. We find that the total amount of the cash received out of sale of land registered during the period from 28.05.2008 to 24.10.2008 was to the tune of Rs.17,54,000/- whereas the cash deposited on 28.05.2008 was to the tune of Rs.19,90,000/-. Hence, the explanation of the assessee cannot be considered as satisfactory. In the absence of any evidences brought before us, we hereby decline to interfere with the order of the Id. CIT (A). As a result, the appeal of the assessee is dismissed.

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7. We have gone through the penalty order dated 01.05.2007 which is reproduced as under:

NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(c) OF THE INCOME-TAX ACT, 1961

PAN/GIR No: N.A. 1170

Office of the  
Income Tax Officer-2(3),  
CGO Complex-II, Kamla Nehru Nagar  
Ghaziabad, dated: 01.05.2017

To,

Shri Sukhpal Singh  
S/o Aman Singh  
Ukralsi, PO- Muradnagar  
Ghaziabad

Whereas in the course of proceedings before me for the assessment year 2009-10, it appears to me that:-

\*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income-tax Act, 1961 no. .... dated ..... Or without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.

\*have without reasonable cause failed to comply with a notice under section 22(4)/23(2)m of the Indian Income-tax Act, 1922 or under section 142(1)/143(2) of the Income-tax Act, 1961.

No. .... dated .....

**\*have concealed the particulars of your income and have furnished inaccurate particulars of such income.**

You are hereby requested to appear before me at 11.00 A.M. on 09.05.2017 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271(1)(c) of the Income-tax Act, 1961.

SEAL



(Mohd. Irshad)  
Income-tax Officer  
Ward-2(3), Ghaziabad.

8. At the outset, the Ld. AR argued that the notice issued was bad in law and void ab initio as the notice prima facie did not satisfy the condition as to which limb of section 271(1)(c) the penalty has been levied either concealed income or furnished inaccurate particulars of income. It was argued that that it is elementary that for assuming valid jurisdiction to impose penalty, the assessing officer must, first be satisfied, though prima facie, that the assessee has either "concealed income" or furnished "inaccurate particulars of income" and on the basis of such satisfaction a show cause notice has to be issued under section 274 of the Act to the assessee specifying the addition/disallowance in respect of which penalty is sought to be imposed and also the precise charge/ ground on which penalty is proposed to be imposed thereon. It was argued that notice issued under section 274 should specifically state the grounds mentioned in section 271(1)(c), i.e., whether it is for 'concealment of income' or for 'furnishing of incorrect particulars of income'. Sending printed form, where both the grounds mentioned in section 271 of the Act are mentioned, does not satisfy requirement of law.

9. The Id. DR argued that the assessee was well aware of the reason of levy of penalty and has indeed replied to the show cause notice.

10. We have gone through the penalty notice issued by the Assessing Officer and find that the penalty notice does not specify whether the penalty was proposed for concealment of particulars of income or for furnishing inaccurate particulars of such income in terms of provisions of Section 271(1)(c).

11. The Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory: 359 ITR 565 held that notice under section 274 should specifically state the grounds mentioned in section 271(1)(c) of the Act, i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy requirement of law.

12. The jurisdictional Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd. in ITA No. 475 of 2019, reiterated that notice under section 274 should specifically state the grounds on which penalty was sought to be imposed as the assessee should know the grounds which he has to meet specifically.

13. The aforesaid principle has been reiterated in the in the case of CIT vs. SSA'S Emerald Meadows 73 taxmann.com 241 (Kar) [Revenue's SLP dismissed in 242 Taxman 180]

14. In the present case, too, in notice dated 01.05.2017 under section 274 read with section 271 of the Act, initiated penalty against the appellant for alleged 'concealment of income or furnishing of inaccurate particulars of such income', that is to say, the specific default was not specified by the assessing officer in the notice issued.

15. Hence, respectfully following the order of the Jurisdictional High Court, since the notice u/s 274 has not been specified as to whether penalty is proposed for alleged 'concealment of

income' OR 'furnishing of inaccurate particulars of such income', the penalty levied is hereby obliterated.

16. As a result, the appeal of the assessee in ITA No. 4096/Del/2019 is dismissed and the appeal of the assessee in ITA No. 4095/Del/2019 is allowed.

Order Pronounced in the Open Court on 12/03/2021.

Sd/-

**(Bhavnes Saini)**  
**Judicial Member**

**Dated: 12/03/2021**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**