

**INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "E": NEW DELHI]**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No.1655/Del/2017
(Assessment Year:2010-11)

Shri Dharendra Tyagi, L/H. Late Shri Mool Chand Tyagi, Vill. & P.O. Makanpur, Indirapuram, Ghaziabad – 201 010 PAN: ADHPC0126F	Vs.	ITO, Ward: 1 (4) Ghaziabad.
(Appellant)		(Respondent)

Assessee by :	Shri Rajesh Kumar Sehgal, C. A.;
Revenue by:	Ms. Aman Preet, Sr. D.R.;
Date of Hearing	23/03/2021
Date of pronouncement	23/03/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals), Ghaziabad, dated 6.12.2016 wherein penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) vide order dated 29.09.2015 by the Income Tax Officer, Ward 1 (4), Ghaziabad was confirmed and the appeal of the assessee was dismissed. The assessee has raised the grounds on the merit as well as on the jurisdiction of the penalty.
2. Brief facts of the case shows that assessee is an Individual. As per the information available the assessee has sold a plot along with three other persons on 1.07.2009 for Rs.6 crores at Sector 3, Vaishali, Ghaziabad. The share of the assessee was 1/4th. The Assessing Officer was of the view that assessee has

earned taxable capital gain. Notice under Section 148 of the Act was issued on 18.04.2013. In response to the notice assessee submitted a return on 27.02.2015 declaring long term capital gain and other interest income at Rs.1,49,09,772/-. After the examination of the claim of the assessee the ld. Assessing Officer passed an order under Section 143(3) read with Section 147 of the Act on 30th March, 2015 at the returned income of the assessee at Rs.1,49,09,770/-. In the assessment order AO mentioned that penalty proceedings under Section 271(1)(c) of the Act are being initiated separately. Consequently, on 30th March, 2015 notice was issued under Section 274 of the Act wherein none of the twin charges i.e. concealment of income or furnishing of inaccurate particulars of income was struck off. The assessee did not furnish any reply in response to the show cause notice for levy of penalty. Thus, the ld. AO passed an order under Section 271(1) (c) of the Act on 29.09.2015 holding that assessee has not filed his return of income voluntarily, but after re-opening of the assessment under Section 147 of the Act. Therefore, assessee has furnished inaccurate particulars of his income to the extent of Rs.1,49,09,770/- and, therefore, he levied a penalty of Rs.30,21,973/-.

3. The assessee challenged the same before the ld. CIT (Appeals). She dismissed the appeal of the assessee. In para No. 5.1.2 (page 9) she held that assessee is liable for penalty under Section 271(1)(c) of the Act as appellant is deemed to have concealed the particulars of income as per explanation [3] of the provisions of section 271[1][c] of the Act. Thus She upheld order of AO but holding that assessee has assessee has concealed income of Rs.1,49,09,770/-. Thus, assessee is in appeal before us.
4. The ld. AR as also the ld. DR was heard on the merits as well as on the jurisdictional issue of penalty proceedings. The ld. Sr. DR vehemently supported the orders of the lower authorities.
5. We have carefully considered the rival contentions and also perused the assessment order, penalty order passed by the ld. AO and order of the ld. CIT (Appeals) confirming the penalty. The satisfaction recorded by the ld. AO in

the assessment order did not show that he is satisfied on any of the twin charges of concealment or on furnishing of inaccurate particulars of income. The notice issued on 30th March, 2015 placed at page 3 of the paper book clearly shows that none of the twin charges have been struck off by the AO. The penalty order shows that penalty is levied for furnishing inaccurate particulars of its income. Appellate order against the penalty order shows that penalty has been confirmed on the charge of the concealment of income. The Id. CIT (Appeals) relied upon Explanation (3) to Section 271(1)(c) of the Act to hold that assessee has concealed particulars of income. Thus, it is apparent that at the time of assessment order and issue of show cause notice for levy of penalty the assessee was not made aware about any specific charge. In the penalty order the AO levied penalty for furnishing inaccurate particulars of income and the CIT (Appeals) confirmed the penalty for concealment of income. The issue is squarely covered by the decision of Hon'ble Delhi High Court in Pr. CIT Vs. Sahara India Life Insurance Corporation of India Ltd. in ITA. No. 4075/Del/2019 dated 2.08.2019 wherein it has been held that notice issued for imposing the penalty would be bad in law if it does not satisfy the specific charge under which the penalty proceedings had been initiated i.e. for concealment of income or for furnishing inaccurate particulars of income. Same is also the decision of the Hon'ble Karnataka High Court in CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 wherein it has been held that the notice issued by the AO would be bad in law if it did not specify for which limb of section 271(1)(c) of the Act, penalty proceedings are initiated. It was further followed in another decision of the Hon'ble Karnataka High Court in CIT Vs. SSA's Emerald Meadows 386 ITR 13 which has also been upheld by the Hon'ble Supreme Court. Such view was also taken by the Hon'ble Bombay High Court in CIT Vs. Samson Perincherry (2017) 392 ITR page 4 (Bom). In the present case is squarely covered by all the above judicial precedents in favour of the assessee. Further on the peculiar facts the AO levied penalty for furnishing inaccurate particulars of income and the CIT

(Appeals) confirmed penalty for concealment of income. In view of the above inconsistency and binding judicial decisions cited above, we reverse the orders of the lower authorities and direct the AO to delete the penalty under Section 271(1)(c) of the Act of Rs.30,21,973/-.

6. In the result, ground No. 2 of the appeal of the assessee is allowed.
7. In view of our decision in ground No. 2 of the appeal, all other grounds of appeal are merely academic in nature and do not require our adjudication.
8. In the result appeal filed by the assessee is allowed.

Order pronounced in the open court on : 23 /03/2021.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 23/03/2021.

MEHTA

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

**ASSISTANT REGISTRAR
ITAT, New Delhi**

Date of dictation	23.03.2021.
Date on which the typed draft is placed before the dictating member	23.03.2021.
Date on which the typed draft is placed before the other member	23.03.2021.
Date on which the approved draft comes to the Sr. PS/ PS	23.03.2021.
Date on which the fair order is placed before the dictating member for pronouncement	23.03.2021.
Date on which the fair order comes back to the Sr. PS/ PS	23.03.2021.
Date on which the final order is uploaded on the website of ITAT	23.03.2021.
date on which the file goes to the Bench Clerk	23.03.2021.
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	