

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

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No.3589/Del/2018
Asstt. Year: 2011-12

Mahesh Chand Goyal (HUF), E-11/8, Vasant Vihar, New Delhi - 110 057 PAN AAAHM2118F	Vs.	ACIT, Circle-62(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri K. Sampath, Advocate Shri V. Raja Kumar, Advocate
Department by :	Mohd. Gayasuddin Ansari, Sr. DR

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the assessee against impugned order dated 31.03.2018, passed by Ld. CIT(Appeals)-20, New Delhi in relation to the penalty proceedings u/s 271(1)(c) for the assessment year 2011-12. The assessee is mainly aggrieved by levy of penalty of Rs. 71,23,650/- on account of following additions :-

S. No.	Particulars	(Amount in Rs.)
1.	Addition on a/c of Profit & gains of Business & Profession which was shown by the assessee as Income from Capital Gain	2,23,34,990/-
2.	Speculative Loss	7,18,907/-

2. The facts, in brief are that the assessee is engaged in the business of trading of copper goods for self and for others on commission basis and also engaged in maintenance of real estate. As against the return of income of Rs. 2,46,74,220/-, the AO completed the assessment at an income of Rs. 2,55,80,050/- after making the aforesaid additions. Before us Ld. Counsel for the assessee submitted that, in so far as addition of Rs. 2,23,34,990/- on account of profit and gains of business, the Tribunal in ITA No. 5038/Del/2015 vide order dated 24.7.2019 in the quantum proceedings has deleted the said addition. However, the second addition in respect of speculation of loss from transaction in copper was decided against the assessee. Thus, in so far as penalty levied on sum of Rs. 2,23,34,990/-, same should be deleted. Ld. Counsel further pointed out that the quantum of penalty which has been confirmed by the Ld. CIT (A) is itself erroneous, because the AO after rectifying the order u/s 154 dated 31.3.2017 had restricted the penalty at Rs. 2,30,53,897/-.

3. In any case, since in the quantum proceedings the Tribunal has deleted the addition made on account of income from short term capital gains of Rs. 2,23,34,990/- which has been decided in favour of the assessee. Therefore, penalty levied on such income / addition stands deleted. Now the quantum of penalty which remains is of Rs. 2,22,142/- on account of treating business loss as speculative loss of Rs. 7,18,907/-. Before us, Ld. Counsel has submitted that assessee has declared all the particulars and material relating to the said transaction in the computation of income and claimed business loss on sale and purchase of copper, whereas AO has treated the loss from the copper trade and as speculative loss. Before the AO, the assessee has given entire details of purchase and sale of copper. The Ld. AO has simply treated the said business loss as speculative loss on the ground the copper was purchased on a single day and was sold within

three hours. Under these facts, it cannot be held that assessee has furnished inaccurate particulars. He further pointed out that the Ld. AO has initiated the penalty on this issue both for concealment of income and filing of inaccurate particulars of income. Even in the penalty notice, the charge has not been specified. Thus, in view of decision of Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory 359 ITR 565 the Hon'ble Apex Court in the case of CIT Vs SSA's Emerald Meadows [2016] 242 Taxman 180 (SC). Such penalty without specifying the charge is void ab initio.

4. On the other hand, Ld. Sr. DR strongly relied upon the order of the Ld. CIT(A).

5. As discussed above, the only issue on which penalty survives is treating the claim of business loss of Rs. 7,18,907/- as speculative loss. From the perusal of the assessment order, it is seen that AO has initiated penalty on both the charges i.e., for concealment of income and for furnishing of inaccurate particulars. Apart from that from the perusal of the penalty notice also, it is seen that no charge has been specified. Thus, the initiation of levy of penalty itself is invalid and void ab initio in view of the aforesaid decision of Hon'ble Karnataka High Court and Hon'ble Supreme Court. Moreover, the Hon'ble Delhi High Court in the case of Sahara India Life Insurance Company Ltd., in ITA 475/2019 order dated 2.8.2019 has followed the aforesaid judgment of Hon'ble Karnataka High Court in holding that if penalty notice doesn't specify the charge in notice same is void-abinitio. Thus on this ground the penalty levied on addition of Rs. 7,18,907/- is quashed.

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

Order pronounced in the Open Court on 26th October, 2021.

sd/-

**(G.S. PANNU)
PRESIDENT**

sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 26/10/2021

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

ASSISTANT REGISTRAR
ITAT, New Delhi