

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

ITA. No. 1620/Del/2018
(Assessment Year: 2009-10)

M/s. Honest Estates Pvt. Ltd. BA-17A, DDA Flats, Ashok Vihar, Phase-I, New Delhi. PAN: AABCH1340Q	Vs.	ACIT, Central Circle : 13, New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Suresh Gupta, C. A.;
Department by :	Ms. Vasundhara Upmanyu, [CIT] – DR
Date of Hearing :	21/10/2021
Date of pronouncement :	18/11/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed against order passed by the Id CIT(A)-XXVI, New Delhi dated 09/02/2018, wherein penalty levied u/s 271(1)(c) of the Act of Rs. 96,217/- by the Id ACIT, Central Circle-13, New Delhi was confirmed.
2. The assessee has aggrieved with that order and has preferred this appeal raising following grounds of appeal:-
 - “1. *The Ld. CIT (A) has erred both in law and in facts in upholding the impugned penalty order passed by Ld. AO is arbitrarily, unjustly and without basis in levying penalty of Rs.96,217/- u/s. 271(1)(c) of the IT Act.*
 2. *The Ld. CIT (A) is, neither on facts or in law, justified in upholding the levy of penalty of Rs.96,217/- u/s 271(1)(c) for concealing/furnishing inaccurate particulars of income whereas the penalty proceedings had been initiated as per the order of assessment for one default which is furnishing inaccurate particulars of income. The AO was not justified changing over the default while levying the penalty in consequent of such initiation for the default for which penalty proceedings were initiated.*
 3. *The Ld. CIT (A) has erred both on facts and in law and also in circumstances of the case in confirming imposition of penalty of Rs.96,217/- u/s 271(1)(c) for concealing / furnishing inaccurate particulars of income without specifying the precise default in the notice and therefore the printed notice without striking off the inapplicable issued for levy of penalty was vague, non-communicative and thus non speaking defeating the purpose of notice.*

4. *The AO both in facts and in law and also in the circumstances of the case has erred in levying penalty on the additions sustained on estimated basis by the Id. CIT (A) ignoring the fact that estimation of income is a process where exact income cannot be computed due to subjective considerations in favour of revenue are taken by the revenue authorities with a view to plug all possible chances of income remaining untaxed due to lower estimation of income.*
 5. *The Ld. CIT (A) has erred both in law and in facts in dismissing the additional ground raised by the appellant during appeal proceeding that the Ld. AO has erred in imposing a penalty u/s 271(1)(c) by computing the quantum of penalty on the basis of tax sought to be evaded which was calculated by subjecting the sustained addition @ 30% whereas correct such calculation was required to be made by taking the tax rate @ 20% being long term capital gain and if this anomaly is corrected the tax sought to be evaded to come down to Rs.64,144/- against the amount of Rs.96,217/- taken by the AO. This ground is without prejudice to the grounds.*
 6. *The appellant craves leave to add, delete, modify / amend the above grounds of appeal with the permission of the Hon'ble appellate authority. “*
3. Briefly stated the facts of the case shows that the assessee is a private limited company engaged in the business of Real Estate. Search u/s 132 was carried out on 30.06.2009. The assessee filed its return of income on 15/12/2011 declaring income of Rs. 7,80,60,630. The assessment u/s 143(3) read with section 153C of the Act was passed on 29/12/2011, wherein computation of capital gain was disturbed. The assessee has disclosed the sale of a building at Rs. 13,16,91,000/- and has shown long term capital gain of Rs. 7,80,78,373/-. The assessee has computed the indexed cost of the above property of Rs. 5,36,12,626/- which was disturbed by the Id AO and treated the same at Rs. 4,34,93,643/-. The assessment order was passed at a total taxable income of Rs. 881,97,357/-. When the increased cost of acquisition was disturb, the Id AO initiated the penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income.
 4. Subsequently, above addition of Rs. 1,01,18,984/- not accepted , assessee has preferred an appeal against the assessment order, the relief of Rs. 98,25,343/- was given to the assessee on account of capital gain by the Id CIT (A) . Therefore, on the balance sum of addition of Rs. 3,11,384/- the penalty was leviable.
 5. Show cause notice was issued to the assessee which was replied by the assessee and submitted that the addition is based on estimated cost valued by the valuer and when that addition is made on the basis of estimation the penalty cannot be levied.
 6. The Id AO rejected the contention of the assessee and held that the assessee has concealed/ furnished inaccurate particulars of income and therefore he passed a penalty order on 28/03/2016 levying penalty of Rs. 96,217/-.

7. This order was challenged before the Id CIT(A) and Id CIT(A) vide order dated 09/02/2018 confirmed the same. Therefore, the assessee is an appeal before us.
8. The first contention raised by the Id AR is that the penalty notice issued on 29/12/2011 placed in the paper book clearly shows that the Id AO has not strike off any of the twin limbs of the penalty. He therefore submitted that the penalty order as such is not sustainable.
9. The Id DR vehemently opposed the above argument.
10. We have carefully considered the rival contentions and also penalty notice dated 29/12/2011 wherein obviously the Id AO has not cancelled any of twin limbs on which penalty u/s 271(1)(c) of the Act can be levied. The above issue is squarely covered by the decision of the Hon'ble Delhi High court in case of PrCIT Vs. Sahara India Life Insurance Corporation, 432 ITR 84 wherein, it has been held that in para 21 that notice issued by the Id AO would be bad in law if it did not specify which limb of section 271(1)(c) of the Act the penalty proceedings had been initiated i.e. whether for concealment of income or for furnishing of inaccurate particulars of income. As the above decision of the Hon'ble Delhi High court reported in 432 ITR 84 clearly covers the issue in favour of the assessee, we reverse the orders of the lower authorities and hold that penalty order issued by the Id AO based on such invalid notice is not sustainable in law. Accordingly, the order passed by the lower authorities is reversed and appeal of the assessee is allowed on this ground.
11. As the appeal of the assessee is allowed on the above ground we do not adjudicate on the merits of the case. Accordingly, the appeal of the assessee is allowed
12. In the result the appeal of the assessee is allowed.
Order pronounced in the open court on : 18/11/2021.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 18/11/2021.

AKKEOT

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	18.11.2021
Date on which the typed draft is placed before the dictating member	18.11.2021
Date on which the typed draft is placed before the other member	18.11.2021
Date on which the approved draft comes to the Sr. PS/ PS	18.11.2021
Date on which the fair order is placed before the dictating member for pronouncement	18.11.2021
Date on which the fair order comes back to the Sr. PS/ PS	18.11.2021
Date on which the final order is uploaded on the website of ITAT	18.11.2021
date on which the file goes to the Bench Clerk	18.11.2021
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	