

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER**  
**AND**  
**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**  
**(Through Video Conferencing)**

ITA. No. 5885/Del/2018  
(Assessment Year: 2012-13)

Shri Sahajiv Rattan, C/o. M/s. RRA TAXINDIA, D-28, South Extension, Part - I, New Delhi - 110 049. <b>PAN: ACIPR8964N</b>	Vs.	Income Tax Officer,  Ward : 3 (3),  New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Kapil Goel, Advocate;
Department by:	Shri Umesh Takyar, Sr. D.R.;
Date of Hearing :	18/11/2021
Date of pronouncement :	18/11/2021

**ORDER**

**PER PRASHANT MAHARISHI, A.M. :**

1. This appeal is filed by the assessee in ITA. No. 5885/Del/2018 against the order passed by the Id. Commissioner of Income Tax (Appeals)-1, New Delhi, dated 30<sup>th</sup> July, 2018, wherein the penalty levied by the Id. Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) imposing a penalty of Rs. 59,27,620/- for furnishing inaccurate particulars of income and also concealing the particulars of income was confirmed.
2. The assessee has raised the following grounds of appeal:-
  - “1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in imposing penalty of Rs.59,27,620/- u/s 271(l)(c) and that too without assuming jurisdiction as per law and the impugned penalty order being illegal and void ab-initio and without observing the principles of natural justice.
  2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in imposing penalty and passing the impugned penalty order and that too without recording the mandatory ‘satisfaction’ as per law and without levying a clear charge whether there was concealment of income or furnishing of inaccurate particulars and without the valid approval of Ld. JCIT.

3. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in imposing penalty u/s 271(l)(c), is bad in law and against the facts and circumstances of the case.
  4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in passing the impugned order and that too without considering the written submissions filed before Ld. CIT(A).
  5. That the assessee craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other. “
3. The brief facts of the case shows that assessee is an Individual engaged in the business of hiring generators and cash vans to the bank and also trading of lubricant oils. The assessee submitted return for assessment year 2012-13 declaring income of Rs. 4,68,250/- on 29<sup>th</sup> March, 2014. The assessment order was passed on 30<sup>th</sup> March, 2015 determining total income of the assessee at Rs 2,01,09,597/- wherein several additions were made. The penalty under Section 271(1)(c) of the Act was also initiated for concealment of income and/or furnishing inaccurate particulars of income assessed under the head ‘Capital Gains’. The addition to the capital gain was made by adopting the fair market value of the property sold as on 1.04.1981 in the return of income. The quantum appeals were preferred before the Id. CIT (Appeals), who confirmed the addition by order dated 30<sup>th</sup> September, 2016 dismissing the appeal of the assessee. Therefore, the penalty proceedings were concluded vide order dated 30<sup>th</sup> March, 2017 on the concealed income of Rs. 1,96,76,584/- were levied.
  4. The assessee challenged the same before the Id. CIT (Appeals), who dismissed the appeal of the assessee and thus assessee is in appeal before us.
  5. The Id. AR submitted that the Id. CIT (Appeals) has confirmed the penalty despite the fact that the Assessing Officer has initiated the penalty proceedings on the basis of penalty notice dated 30<sup>th</sup> March, 2015 without cancelling any of the twin limbs in the penalty notice. He submitted that the issue is clearly covered in favour of the assessee by the decision of the Hon’ble Delhi High Court in the case of Pr. CIT Vs Sahara Life Insurance Corporation Ltd. (432 ITR 84) (Del). He referred to para No. 21 of the said order.
  6. The Id. DR supported the orders of the lower authorities.
  7. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also perused the penalty notice dated 30<sup>th</sup> March, 2015 wherein the penalty was initiated without striking any of the twin limbs of concealing the particulars of income or furnishing inaccurate particulars of such income. We find that the issue is squarely covered in favour of the assessee by the decision of the Hon’ble Delhi High Court in Pr. CIT Vs Sahara Life Insurance

Corporation Ltd. (supra) wherein it has been held that the notice issued by the Assessing Officer would be bad in law if it did not specify in which limb of Section 271(1)(c) the penalty proceedings had been initiated. Further the first para of the order of the Id. CIT (Appeals) also referred to both the limbs of Section 271(1)(c) of the Act. In the penalty order also the Assessing Officer has mentioned in para No. 13 that assessee has concealed the income. In the assessment order, we do not find that under which limb the penalty proceedings are initiated. The last para of the assessment order the Assessing Officer has also mentioned both the limbs. Therefore, respectfully following the decision of the Hon'ble Delhi High Court, ground No. 2 of the appeal of the assessee is allowed.

8. Accordingly, the penalty levied of Rs.59,27,620/- under Section 271(1)(c) of the Act is deleted and orders of the lower authorities are reversed.
9. 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

\*MEHTA\*

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi