

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. Saktijit Dey, Judicial Member

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

(Through Video Conferencing)

ITA No. 7436/Del/2017 : Asstt. Year : 2014-15

Suwendu Banarjee, B-137, Chittranjan Park, New Delhi-110019	Vs	ACIT, Circle-30(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAAPB0869L		

Assessee by : None

Revenue by : Sh. Umesh Takyar, Sr. DR

Date of Hearing: 03.03.2022

Date of Pronouncement: 09.03.2022

ORDER

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

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-10, New Delhi dated 28.09.2017.

2. The only issue for deliberation in the present case is imposition of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 amounting to Rs.1,02,540/-. The assessee had claimed long term capital loss while filing the return of income for the year under consideration amounting to Rs.62,51,836/- whereas during the assessment proceedings, assessee offered an amount of Rs.3,38,416/- as taxable short term capital gain instead of earlier claim of loss. While passing the penalty order, AO has given a finding that assessee has not only made erroneous claim in respect of capital gain, which was deliberate and

willful, therefore, provisions of section 271(1)(c) read with Explanation 1 is clearly applicable in the present case. On the other hand, during the appellate proceedings, the Id. AR relying on various judicial pronouncements, has contended that the offer of taxation of short term capital gain instead of earlier claim of long term capital loss while filing the return of income was just to avoid any litigation in future and to buy peace of mind.

3. Explanation 1 to Sec 271(1)(c) sets out the circumstances which justifies levy of penalty. It reads as under:

Explanation 1. Where in respect of any facts material to the computation of the total income of any person under this Act,-

(A) Such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Commissioner to be false, or

(B) Such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him. then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section be deemed to represent the income in respect of which particulars have been concealed.

The implication of the Explanation as under:-

- (1) Every difference between reported and assessed income needs an explanation.
 - (2) If no explanation is offered, levy of penalty may be justified.
 - (3) If explanation is offered, but is found to be false, penalty will be exigible.
 - (4) If explanation is offered and it is not found to be false, penalty may not be leviable:-
 - (a) such explanation is bona fide.
 - (b) the Assessee had made available to the Assessing Officer all the facts and materials necessary in computation of income.
4. The effective part of the satisfaction recorded by the AO is reproduced as under:

*"Further, Rs.3,38,416/- being Short Term Capital Gain is also added back to his total income under the head Short Term Capital Gain. Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 for **concealment of income as aforesaid and furnishing inaccurate particulars** within the meaning of explanation 1 to the sub-section (1) of Section 271(1)(c) of the Income Tax Act, 1961 are initiated."*

5. Thus, we find that the satisfaction recorded has not specified as to which limb of Section 271(1)(c), the penalty is proposed to be levied whether concealment of income or furnishing of inaccurate particulars of his income.

6. The page no. 1 para 3 of the penalty order reads as under:

*"Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 for **concealment of income as aforesaid and furnishing inaccurate particulars** within the meaning of explanation 1 to the sub-section (1) of Section 271(1)(c) of the Income Tax Act, 1961 was initiated and notice under section 271(1)(c) read with section 274 of the Income Tax Act, 1961 was issued to the assessee on 29.08.2016 which was duly served upon the assessee.."*

7. Thus, we find that the notice issued u/s 274 has not specified as to which limb of Section 271(1)(c), the penalty is proposed to be levied whether concealment of income or furnishing of inaccurate particulars of his income.

8. The last para on the penultimate page of the penalty order reads as under:

*"In view of above quoted facts, the assessee has deliberately and willfully **concealed his income and has furnished inaccurate particulars of his income** by claiming long term capital loss of Rs.62,51,816/- in its return of income filed for the year as against the assessed short term capital gain of Rs.3,38,416/-....."*

9. From the above, we find that the AO has not specified as to which limb of Section 271(1)(c), the penalty is levied whether for concealment of income or furnishing of inaccurate particulars of his income.

10. On this issue, we are guided by the following judgments:

- 1) Karnataka High Court: 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.
- 2) Bombay High Court: Mr. Mohd. Farhan A. Shaikh Vs ACIT Section 271(1)(c): Penalty-Concealment-Non-striking off of the irrelevant part while issuing notice u/s 271(1)(c) of the Income Tax Act, order is bad in law. Assessee must be informed of the ground of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.
- 3) The Hon'ble 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.
- 4) 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]

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

'concealment of income' OR 'furnishing of inaccurate particulars of such income', and also for the reason that the penalty levied also doesn't mention as to whether the said penalty was levied for "concealment of income" or "furnishing inaccurate particulars of income", the penalty levied is hereby obliterated.

12. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 09/03/2022.

Sd/-

(Saktijit Dey)
Judicial Member

Dated: 09/03/2022

Subodh Kumar, Sr. PS

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