

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No. 6344/Del/2019
(Assessment Year : 2015-16)

S. S. Total Construction (India) Pvt. Ltd. 22/20A, Tilak Nagar New Delhi – 110 018 PAN No. AAOCS 8888 B (APPELLANT)	Vs.	ACIT Circle – 24(1) New Delhi (RESPONDENT)
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Assessee by	-None-
Revenue by	Shri B. M. Singh, Sr. D.R.

Date of hearing:	30.01.2023
Date of Pronouncement:	16.02.2023

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 10.06.2019 of the Commissioner of Income Tax (Appeals)-8, New Delhi relating to Assessment Year 2015-16.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company who is stated to be engaged in the business of civil construction work. Assessee electronically filed

its return of income for A.Y. 2015-16 on 03.09.2015 disclosing total income of Rs.1,88,00,730/- under normal provision of the Income-tax Act. Thereafter, the case was selected for scrutiny under CASS and notices were issued and served upon the assessee. The assessment was thereafter framed u/s 143(3) of the Act vide order dated 25.12.2017 determining the total income at Rs.1,91,62,510/- under the normal provision of the Income-tax Act, 1961 *inter alia* by making addition of Rs.2,53,808/- on account of interest income which according to AO was not disclosed by the assessee. On the aforesaid addition of Rs.2,53,808/-, AO vide order dated 29.06.2018 passed u/s 271(1)(c) of the Act levied penalty of Rs.90,000/- u/s 271(1)(c) of the Act.

4. Aggrieved by the order of AO, Assessee carried the matter before CIT(A) who vide order dated 10.06.2019 in Appeal No.10110/18-19 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds of appeal :

- “1. *That the order is against the law and facts of the case.*
2. *That the Ld CIT(A) has erred in confirming the imposition of Penalty of Rs.90,000/- u/s 271(1)(c) of the Act by Ld. AO.”*

5. On the date of hearing, none appeared on behalf of the assessee, though the case file reveals that the notice of hearing was issued to the assessee. In the absence of any representation,

we proceed to dispose of the appeal, ex parte qua the assessee, after considering the material on record and hearing the DR.

6. Before us, Learned DR submitted that assessee had not disclosed the interest income which was reflected in Form 26AS. He, therefore, submitted that the levy of penalty has to be seen after considering overall conduct of the assessee. He, thus, supported the orders of the lower authorities.

7. We have heard the Learned DR and perused the material available on record. The issue in the present ground is with respect to the levy of penalty u/s 271(1)(c) of the Act. In the present case the penalty u/s 271(1)(c) has been levied on the addition of interest made by the AO in the assessment proceedings. The perusal of the assessment order passed u/s 143(3) of the Act reveals that on the aforesaid additions made AO has recorded the satisfaction about furnishing of inaccurate particulars of income by the assessee. Thereafter, in the penalty order passed u/s 271(1)(c) of the Act on 29.06.2018, AO records that conceal the income and has not furnished accurate particulars of income. He has thereafter levied penalty for furnishing of inaccurate particulars of income. It is a settled law that while levying penalty for furnishing of inaccurate particulars of income, the AO has to record satisfaction and thereafter come to a finding in respect of one of the limbs, which is specified under section 271(1)(c) of the Act. The first step is to record satisfaction while completing the assessment as to whether the

assessee had concealed the income or furnished inaccurate particulars of income. Thereafter, notice u/s 274 read with Section 271(l)(c) of the Act is to be issued to the assessee. The Assessing Officer thereafter has to levy penalty under Section 271(l)(c) of the Act for non-satisfaction of either of the limbs. While completing the assessment, the Assessing Officer has to come to a finding as to whether the assessee has concealed the income or furnished inaccurate particulars of income. The Hon'ble Bombay High Court in CIT vs. Samson Perinchery (2017) 392 ITR 4 (Bom) has held that where initiation of penalty is one limb and the levy of penalty is on other limb, then in the absence of proper show cause notice to the assessee, there is no merit in levy of penalty.

8. Considering the facts of the present case in the light of the aforesaid decision of Hon'ble Bombay High Court in the case of Samson Perinchery (supra) we are of the view that in the present case, the basic condition for levy of penalty has not been fulfilled and that the penalty order suffers from non-exercising of jurisdiction power of AO.

9. Considering the totality of the aforesaid facts, we are of the view that the conditions stipulated u/s 271(1)(c) for the levy of penalty are not attracted in the present case. We therefore, direct its deletion. **The ground of assessee is allowed.**

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

Order pronounced in the open court on 16.02.2023

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 16.02.2023

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI