

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.1925/Del./2018
(ASSESSMENT YEAR : 1997-98)**

**ITA No.1926/Del./2018
(ASSESSMENT YEAR : 2000-01)**

ITO, Ward 2 (3),
Dehradun.

vs.

Sanjay Ghai,
Guru Ram Rai Market,
Dharam Bazar, Rajpur Road,
Dehradun (Uttarakhand).

(PAN : ABIPG9612P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Dr. Rakesh Gupta, Advocate
Shri Somil Agarwal, Advocate
REVENUE BY : Ms. Kajal Singh, Sr. DR

Date of Hearing : 18.04.2023

Date of Order : 26.04.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These are appeals by the Revenue against the orders of ld. CIT

(Appeals) for the concerned assessment years.

2. Grounds of appeal raised in the appeals read as under :-

“ITA No.1925/Del/2018

1. The Ld. CIT (A) has erred in law and on facts in allowing the penalty u/s 271(1)(c) of the Income Tax Act, 1961

amounting to Rs.54,81,000/- levied on account of addition to the income declared by the assessee as the same tantamount to the furnishing of inaccurate particulars of income.

2. The order of the Ld. CIT (A) be set aside and the order of the AO be restored.”

“ITA No.1926/Del/2018

1. The Ld. CIT (A) has erred in law and on facts in allowing the penalty u/s 271(1)(c) of the Income Tax Act, 1961 amounting to Rs.12,03,491/- levied on account of addition to the income declared by the assessee as the same tantamount to the furnishing of inaccurate particulars of income.

2. The order of the Ld. CIT (A) be set aside and the order of the AO be restored.”

3. We note that these appeals were earlier disposed off by the Tribunal in ITA Nos.1925 & 1926/Del/2018 for AYs 1997-98 & 2000-01 vide order dated 28.08.2018 by dismissing the appeals on account of tax effect. However, subsequently, by an MA order, the order was recalled and pursuant to this recall, we have heard the case.

4. As regards ITA No.1926/Del/2018 is concerned, the ground pertains to deletion of addition of Rs.12,03,491/- being penalty under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'). Both the parties fairly agreed that the tax effect in this case is below the limit fixed by the CBDT for filing the appeal in ITAT, hence the same is dismissed on account of tax effect.

5. As regards ITA No.1925/Del/2018 is concerned, ld. Counsel of the assessee has filed a petition under Rule 27 of the Appellate Tribunal Rules, 1963 which read as under :-

“Sub: Petition in the case of She Sanjay Ghai for AY 1997-98 u/s 271(1)(c) in ITA No. 1925/Del/2018 under Rule 27 of The Appellate Tribunal Rules, 1963

In the above said case, the department has filed an appeal on 19.03.2018 which is fixed for hearing before Your Honours for 18.04.2023.

It is respectfully submitted-that the respondent assessee hereby would like to seek the permission of the Hon'ble Bench to raise the following grounds under Rule 27 of The Appellate Tribunal Rules, 1963:

1. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in imposing penalty u/s 271 (1)(c) and framing the impugned penalty order and that too without assuming jurisdiction as per law and without complying with the mandatory conditions as laid down under the said section.

2. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in imposing penalty u/s 271 (1)(c) and passing the impugned penalty order more so when the charge on penalty notice dated 27.03.2003 was not specified as to whether penalty is being initiated for "concealment of particulars of income" or for "furnishing inaccurate particulars of income".

3. That in any case and in any view of the matter, action of Ld. AO in imposing penalty U/S 271 (1)(c) and passing the impugned penalty order more so when the penalty notice dated 27.03.2003 is invalid is illegal, bad in law, void ab initio and against the facts and circumstances of the case.

Further reliance is also placed on the following judgements: -

- a) Rohtak & Hissar Districts Electric Supply Co. (P) Ltd. vs. CIT, (1981) 128 ITR 52 (Del.)
- b) ITO vs. Smt. Gurinder Kaur, (2006) 102 ITD 0189 (Del.)
- c) ACIT vs. Balbir Chand Maini, (2007) 111 TTJ 0160 (Chd.)
- d) ACIT vs. India Cements Ltd, (2010) 124 ITD 343 (Chennai)
- e) ITO vs. Blossom Floriculture, (2010) 134 TTJ 51(UO) (Lucknow)
- f) DCIT vs. Anant Raj Industries Ltd., (2010) 124 ITD 0284 (Del.)

- g) ADIT vs. Bank of Tokyo -Mitsubishi UJF Ltd., (2009) 18 DTR 0432 (Del.)
- h) ACIT & Anr. vs. Ravnet Solutions Pvt. Ltd. & Anr., (2017) 49 CCH 0156, (Del.)
- i) Hon'ble Delhi Bench in the case of DC IT vs. Jubliant Enpro Pvt. Ltd, (2014) 150 ITD 0419, have gone to the extent of holding that respondent cannot be debarred from raising that aspect of the issue which was not taken up before the first appellate authority or taken up but remain undecided.
- j) That Hon'ble Bombay High Court in the case of Jehangir H.C. Jehangir vs. ITO, (2014) 112 DTR 0262, have gone to the extent of holding that issue cannot be refused to be considered by Hon'ble Tribunal merely because Ld. CIT(A) did not render any view.
- k) The Hon'ble High Court of Allahbad in the case of Chandra Prakash Jain vs. ACIT (Inv.), (2014) 107 DTR 0081, has held that there is no illegality if the Tribunal proceeds to dispose the different aspects of the same issue.
- l) Reliance is also placed on the decision of CIT vs. Smt. Sanghamitra Bharali, (2014) 361 ITR 0481(Gau.)”

6. We have heard both the parties with regard to the petition filed under Rule 27. In the interest of justice, we admit the same.

7. The petition speaks of defect in the penalty notice inasmuch the claim is that charge in the penalty notice is not specified as to whether penalty is levied on account of concealment of particulars of income or for furnishing of inaccurate particulars of income. In such circumstances, assessee has pleaded that the penalty does not survive.

8. We have carefully considered the submissions. We note that non-specification of charge in penalty notice is fatal. In the present case, it is the claim of assessee that specific limb was not specified. This averment

has not been disputed by the Revenue. In such circumstances, when penalty notice is an omnibus notice and the charge is not specified, penalty under section 271(1)(c) of the Act will not survive. This view was recently reiterated by Hon'ble Bombay High Court (Full Bench at Goa) in the case of Mr. Mohd. Farhan A. Shaikh v. ACIT in Tax Appeal No. 51 and 57 of 2012 dated 11.03.2021. Similar proposition was laid down by Hon'ble Delhi High Court in the case of Pr. CIT vs Sahara India Life Insurance Co. Ltd. [2021] 432 ITR 84 (Del.) Thus, since the penalty notice is omnibus and the charge has not been specified, the penalty is not sustainable. Accordingly, following the precedent and on the undisputed proposition that relevant limb of the penalty notice was not identified as to whether penalty was for concealment or furnishing of inaccurate particulars of income, we uphold the orders of the Id. CIT (A) deleting the penalty.

9. In the result, the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on this 26th day of April, 2023.

**Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 26th day of April, 2023/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.