IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.As No.2306, 2307, 2308 & 2309/DEL/2022
Assessment Years 2013-14, 2014-15, 2015-16 & 2016-17

Gawar Constructions Co. Pvt. Ltd. DSS-378, Sector-16-17, Hisar, Haryana -125001	v.	DCIT, Central Circle-I, Faridabad.
TAN/PAN: AADCS3262N		
(Appellant)		(Respondent)

Appellant by:	Shri Ashwani Kumar, Adv.		
Respondent by:	Shri. T. James Singson, CIT-DR		
Date of hearing:	09	05	2023
Date of pronouncement:		05	2023

O R D E R

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeals have been filed by the Assessee against the orders of the Commissioner of Income Tax (Appeals)-III, Gurgaon ('CIT(A)' in short) all dated 22.07.2022 arising from the penalty order all dated 15.12.2020 passed by the Assessing Officer (AO) under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning Assessment Years (AYs) 2013-14, 2014-15, 2015-16 & 2016-17.

2. The assessee as per its grounds of appeal has challenged the imposition of penalty under Section 271(1)(c) for different assessment years of different amounts.

3. The AO in the penalty order passed under Section

271(1)(c) has imposed penalty of Rs.4,63,500/- concerning AY 2013-14; Rs.3,70,800/- for AY 2014-15; Rs.2,16,300/- for AY 2015-16 and Rs.92,700/- for AY 2016-17 in appeal.

4. We have heard the rival submissions.

5. Multiple objections have been raised on behalf of the assessee to assail the imposition of penalty. One of the objections borne out on behalf of the assessee is that while the satisfaction has been drawn towards concealment of particulars of income in the course of the assessment proceedings, the corresponding penalty has been eventually imposed on the grounds of furnishing of inaccurate particulars of income in so far as AY 2013-14 is concern. Likewise, AYs 2014-15, 2015-16 and 2016-17, initially satisfaction has been drawn by the Assessing Officer in the course of the assessment proceedings towards concealment of particulars of income. Based on this satisfaction, the notice under Section 274 r.w. Section 271(1)(c) was issued. However, the penalty has been imposed on the grounds of furnishing of inaccurate particulars of income. Thus, the basis for drawing satisfaction under Section 271(1B) and the actual basis for imposition of penalty are quite different. The impugned action of the Assessing Officer for imposition of penalty on a different ground than the ground on which the satisfaction was drawn, is wholly untenable in law in the light of the decision of Co-ordinate Bench in the case of *Hatis Prabhu Das Chaudhary vs. ITO, ITA No.3557/Ahd/2016 order dated 19.06.2018*. The relevant operative paragraph of the order of the Co-ordinate Bench is reproduced hereunder:

"Couple with this, we simultaneously notice that the action of the AO is quite vague. The 'satisfaction' in the course of the assessment was formed for alleged 'furnishing of inaccurate particulars of income'. The penalty notice does not specify the nature of default and thus suffers from vice of ambiguity. The AO, however, in departure with the satisfaction formed in the assessment proceedings, went on to impose penalty on a different ground i.e. concealment of particulars of income. Ostensibly, the original basis of initiation of penalty has been altered in a significant way by the AO himself by imposing the penalty. The A.Y. 2010-11 basis for formation of satisfaction, thus, was altered and rendered nonexistent. Hence, in the absence of continuity in the satisfaction of the AO at the quantum stage vis-à-vis penalty stage, the penalty order passed by the AO is liable to be struck down on this ground also. For such a view, we may usefully refer to the decision of the Hon'ble Gujarat High Court in the case of New Sorathia Engineering Co. (supra) as well as another decision of the Hon'ble Gujarat High Court in the case of CIT vs. Manu Engineering Works (1980) 122 ITR 306 (Guj). Thus, in totality, penal action under s.271(1)(c) of the Act is not sustainable in law."

6. Consequently, the impugned penalty orders passed by the AO in respective captioned appeals are set aside and the penalty so imposed under Section 271(1)(c) are cancelled.

7. In the result, all the captioned appeals of the assessee are allowed.

Order pronounced in the open Court on 09/05/2023.

Sd/-

[CHANDRA MOHAN GARG]
JUDICIAL MEMBER

Sd/-

[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: **/05/2023**

Prabhat