

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
DR. B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No.1550/Del/2023
[Assessment Year : 2012-13]**

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| Meena Singhal, C-3/52,Rajashthali Apartment, Pitampura, New Delhi-110034. PAN-ACAPS1872L | vs | ITO, Ward-43(6), New Delhi. |
| APPELLANT | | RESPONDENT |
| Appellant by | Shri Pranshu Singhal, CA | |
| Respondent by | Shri Om Parkash, Sr.DR | |
| Date of Hearing | 21.06.2023 | |
| Date of Pronouncement | 27.06.2023 | |

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2012-13 is directed against the order of Ld. CIT(A), National faceless Appeal Centre (“NFAC”), Delhi dated 20.03.2023.

2. The assessee has raised following grounds of appeal:-

1. *“On the facts and circumstances of the case, the order passed by the Ld. CIT(A) is bad both in the eyes of law as well as on the facts of the case.*
2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in levying penalty in gross violation of principle of natural justice and without providing sufficient opportunity to the appellant to present its case.*
3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in confirming the penalty of Rs. 61,612/- u/s 271(1)(c) of the Act on account of concealment of income and*

furnishing of inaccurate particulars of income being 100% of the tax on the addition of Rs. 3,45,482/-.

- 4. (1) On the facts and circumstances of the case, the show cause notice u/s 274 r.w.s 271 of the act issued by Id. AO is invalid in law as the same does not mention any specific charge as to the concealment of income or furnishing of inaccurate particulars of income. (ii) On the facts and circumstances of the case, the show cause notice u/s 274 r.w.s 271 of the act issued by Id. AO is invalid as the same does not mention the amount of penalty show caused. (iii) That the Id. CIT(A) has erred both on facts and in law in confirming the penalty imposed on the basis of invalid notice and as such the same is liable to be quashed.*
- 5. On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in confirming penalty u/s 271(1)(c) of the Act in respect of the addition of Rs. 3,45,482/- made on account of short term capital gain on sale of shares.*
- 6. On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in confirming the penalty ignoring the fact mere additions per se cannot be the basis for imposing the penalty u/s 271(1)(c) of the Act.*
- 7. On the facts and circumstances of the case, the said action of the Id. CIT(A) is bad in law in upholding the penalty u/s 271(1)(c) of the act ignoring the fact that penalty proceedings are independent of the assessment proceedings.*
- 8. On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in confirming the penalty u/s 271(1)(c) so imposed without giving any findings on the merits of the case regarding concealment of income or furnishing of inaccurate particulars of income.*
- 9. That the appellant craves leave to add, alter or amend any of the grounds of appeal.”*

3. Facts giving rise to the present appeal are that income tax return filed by the assessee on 23.05.2012 declaring total income of Rs.14,52,020/- from Salary, house property, capital gains, and income from other sources. The case of the assessee was re-opened for scrutiny u/s 147/148 of the Income Tax Act, 1961 ("the Act") for the reason that the assessee had purchased the penny scrip of M/s. Dhvanil Chemicals Ltd. of Rs.12,35,000/- and sold the same for INR 26,00,000/-. Statutory notices u/s 148 and 143(2) of the Act dated 31.03.2019 and 18.11.2019 respectively were issued and served upon the assessee. In response thereto, the assessee filed reply from time to time. It was observed by the Assessing Officer ("AO") that the assessee had shown taxable short term capital gain amounting to INR 10,17,175/- in her computation of income. Therefore, the assessee has not offered whole amount of Short Term Capital Gain ("STCG") of INR 13,62,657/- earned on penny scrips of M/s. Dhvanil Chemicals Ltd. Thereafter, remaining amount of STCG on penny scrips of M/s. Dhvanil Chemicals Ltd. i.e. INR 3,45,482/- (difference between INR 13,62,657/- and INR 10,17,175/-) was added to the income of the assessee under the head "Capital Gain". Hence, the AO framed the assessment u/s 147 r.w.s. 143(3) of the Act order dated 18.12.2019, assessed the income of the assessee at INR 17,97,502/- and initiated penalty u/s 271(1)(c) of the Act separately. Therefore, the impugned penalty was imposed vide order dated 03.01.2022.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. At the outset, Ld. Counsel for the assessee submitted that the impugned penalty cannot be sustained in view of the fact that the notice issued by the Assessing Authority dated 18.12.2019 does not disclose the specific charge. He submitted that the issue is squarely covered in favour of the assessee. He further reiterated the submissions as made in the synopsis. The relevant contents of the synopsis are reproduced as under for the sake of clarity:-

“This is an appeal filed by the assessee against the order of the CIT(A)-NFAC dated 20.03.2023 passed u/s 271(1)(c) wherein the penalty of Rs. 61,612/- as levied by the AO in his order dated 03.01.2022 has been confirmed by the CIT(A).

2. *The penalty has been levied by the AO on the basis of the additions made by him in his order u/s 147 r.w.s 143(3) dated 18.12.2019, wherein the income of the assessee was assessed at Rs. 17,97,502/- while making an addition on account of STCG of Rs. 14,52,020/-.*

3. Legal Issue:

Show Cause Notice issued u/s 274 r.w.s 271 is invalid in law and is liable to be quashed

It is here to bring in notice that the AO has issued notices u/s 274 r.w.s. 271 of the IT Act, 1961 on 18.12.2019. However the AO has not struck off the inappropriate words/allegation between "have concealed the income" or "furnished inaccurate particulars of such income" and therefore left an ambiguity to the charge imposed on assessee for penalty imposition.

4. *Since the limb under which the penalty u/s 271(1)(c) has been initiated and levied is not mentioned in the notices issued u/s 274 r.w.s. 271 no penalty could be imposed on the assessee:-*

- *Pr. CIT, v. M/S. Sahara India Life Insurance company, Ltd., [2021] 432 ITR 84 (Del), dt. 02.08.2019, Hon'ble Delhi High Court*

- *CIT VS. M/s. Manjunathan Cotton and Ginning Factory & Othrs, [2013] 359 ITR 565, Karnataka HC*
- *CIT Vs. SSA Emerald Meadows, ITA No. 380 of 2015, Karnataka HC also confirmed by SC*
- *George Kutty, C/O-M/S. Oasis Tours India (P.) Ltd. Versus Dcit, ITA No.3788/Del/2019, dt. 24.08.2022 - Legend Realtors Pvt. Ltd. Versus Income-Tax Officer, ITA 36/DEL/2021, dt.31.10.2022*
- *Acit Versus M/S. Noesis Industries Ltd., I.T.A. No. 7327/DEL/2018, dt. 06.12.2022*
- *Babita Khurana V. Dcit, ITA Nos. 3217 And 3218/Del/2018, dt. 26.04.2023*
- *BLK NCC Consortium V ACIT, I.T.A. No. 8802/DEL/2019, dt. 21.10.2022*
- *Ekshad Ahmad Patodi, Us Nagar Prop. M/S New Hind Agency Versus Acit, I.T.A. No. 76/DDN/2019, dt. 16.12.2022*
- *Ms. Bits Information Technology Solutions Pvt. Ltd. V. ITO, I.T.A. No.9803/DEL/2019, dt. 21.10.2022*
- *Maneesh Kansal V. ITO, I.T.A. No. 6400/DEL/2019, dt. 02.12.2022*
- *Virender Kumar Khosla V. Acit, I.T.A. No. 8228/DEL/2018, dt. 13.12.2022*

5. *Further, the addition of Short Term Capital Gain of Rs. 3,45,482/- made by the AO has already been declared by the assessee in her return of income, the AO without considering the details of capital gains submitted by the assessee, straight away made the addition without even issuing a show cause notice in regard to this. The assessee in order to avoid any further litigation paid the due taxes and decided not to go in appeal.”*

7. On the other hand, Ld. Sr. DR opposed the submissions and supported the orders of the authorities below. He submitted that the assessee was well

aware about the charge and he participated into the proceedings. Therefore, it cannot be constituted that he was not aware of the specific charge.

8. We have heard Ld. Authorized Representatives (“AR”) of the parties and perused the material available on record. There is no dispute with regard to the fact that the notice issued by the AO does not disclose the specific charge. The Hon’ble Delhi High Court in the case of **Pr.CIT vs M/s. Sahara India Life Insurance Company Ltd. [2021] 432 ITR 84 (Del.)** dated **02.08.2019** has decided the issue in favour of the assessee. Under the identical facts, Hon’ble High Court has ruled against the Revenue. Therefore, in the light of the above-mentioned binding precedent and the facts are not under dispute regarding the notice being defective. Therefore, we, hereby delete the impugned penalty imposed u/s 271(1)(c) by the AO. Grounds raised by the assessee are thus, allowed.

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

Order pronounced in the open Court on 27th June, 2023.

Sd/-

(DR.B.R.R.KUMAR)
ACCOUNTANT MEMBER

** Amit Kumar **

Copy forwarded to:

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

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI