

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos.2671 & 2672/DEL/2018
(निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11)

Sanjiv Gupta 56A/1, New Friends Colony (E), New Delhi.	बनाम/ Vs.	ACIT, Central Circle-30, New Delhi.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABVPG5653P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Gaurav Jain, Adv. Shri V.K. Garg, Adv. & Shri Sudarshan Roy, Adv.
प्रत्यर्थी की ओर से/Respondent by :	Shri Sanjay Kumar, Sr. DR

सुनवाई की तारीख / Date of Hearing	27/06/2023
घोषणा की तारीख /Date of Pronouncement	27/06/2023

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals have been filed by the assessee against the respective orders of the Commissioner of Income Tax (Appeals), ('CIT(A)' in short) for the assessment years 2009-10 and 2010-11 both dated 12.03.2018 arising from respective penalty orders passed by the Assessing Officer under s. 271(1)(c) of the Income Tax Act, 1961 (the Act).

2. As per the captioned appeals, the assessee seeks to challenge the imposition of penalty on undisclosed investment of

Rs.3,43,000/- and Rs.90,800/- on account of purchase of watches for assessment years 2009-10 and 2010-11 respectively.

3. When the matter was called for hearing, the Ld. Counsel for the assessee straightway adverted our attention to the fact that the Assessing Officer while framing the assessment order has not recorded any 'satisfaction' towards the nature of default as required u/s 271(1B) of the Act.

4. The Ld. Counsel points out that as regards the alleged undisclosed investment, the Assessing Officer while framing the assessment order has merely recorded "*penalty proceedings u/s 271(1)(c) of the Act is being initiated separately on this account*". The Ld. Counsel thus submitted that the satisfaction towards the nature of default committed by the assessee for such additions is clearly absent in contradiction of the provisions of Section 271(1B) of the Act. The Ld. Counsel thus contends that in the absence of satisfaction towards the nature of default in the course of assessment, the consequential penalty proceedings stand vitiated. The Ld. Counsel thereafter adverted to notice issued u/s 274 r.w.s. 271(1)(c) of the Act for their respective assessment years and pointed out that the aforesaid show cause notices proposing imposition of penalty u/s 271(1)(c) of the Act is yet again bereft of any specific charge against the assessee. The AO has not cared to stike off the irrelevant portion in the show cause notices to make the assessee aware as to whether the allegation against him is on account of 'concealment of particulars of income' or towards 'furnishing inaccurate particulars of income'. Having regard to such vague notice, the assessee is prevented from making suitable response. In this regard, the Ld. Counsel refers to the decision of the coordinate bench in the case of *A to Z Maintenance and Engineering Services Ltd. ITA No. 2631/Del/2018 dated 28.03.2023*

and plethora of other decisions. The Ld. Counsel thus submits that the observations made in the assessment proceedings are quite vague and non-descript for the purposes of initiation of penalty proceedings under section 271(1)(c) of the Act. As stated, the assessee is entitled in law to defend the show cause notice based on exact nature of default allegedly committed. The Ld. Counsel thus submits that in the absence of any satisfaction towards the exact nature of charge, the imposition of penalty u/s 271(1)(c) is without sanction of law and thus request to be quashed.

5. The Ld. DR of the Revenue, on the other hand, relies upon the action of the lower authorities.

6. We have carefully considered the rival submissions. The imposition of penalty u/s 271(1)(c) of the Act is in issue in both the captioned appeals. As noted in preceding paras, the Ld. Counsel for the assessee has sufficiently demonstrated the total absence of any satisfaction recorded in the assessment order as well as show cause notice for imposition of penalty. Section 271(1)(c) r.w.s. 271(1B) requires that the Assessing Officer must be satisfied towards the exact nature of default allegedly committed by the assessee before taking recourse to issuance of show cause notice. The Assessing Officer in the instant case has miserably failed to demonstrate the satisfaction as contemplated u/s 271(1)(c) r.w.s. 271(1B) of the Act. Clearly the ingredients of Section 271(1)(c) are not satisfied in the instant case. Without repeating the plea raised on behalf of the assessee, we are inclined to agree. Hence, the action of the CIT(A) is set aside and the penalty imposed by the AO is cancelled in both the captioned appeals.

7. In the result, both the appeals of the assessee are allowed.

This Order was pronounced in Open Court on 27/06/2023

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Delhi: Dated 27/06/2023

True Copy

*Kavita Arora

आदेश की प्रतिलिपि अर्गेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI /
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order,

ASSISTANT REGISTRAR
ITAT, Delhi