

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

BEFORE, SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.2097/Del/2023
(Assessment Year : 2015-16)

Identity Wellness Centre Pvt. Ltd., 6-3-634, Green Channel Apartment, Khairtahabad, Hyderabad -500 004 Telangana	Vs.	DCIT Circle - 12(1) New Delhi
PAN No. AADCN 1361 M (APPELLANT)		(RESPONDENT)

Assessee by	-None-
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	22.11.2023
Date of Pronouncement:	22.11.2023

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed at the instance of the assessee against the imposition of penalty under section 271(1)(c) of the Income Tax Act, 1961 (the Act) amounting to Rs.28,43,574/- concerning Assessment Year 2015-16. The order of CIT(A) dated 07.06.2023 arising from penalty order under section 271(1)(c) of the Act dated 02.07.2018 is under challenge in the captioned appeal.

2. When the matter was called for hearing, none attended for the assessee. It is seen from the record that assessee has sought adjournment time and again which was liberally granted by the Tribunal. The assessee once again moved adjournment letter dated 15.11.2023 seeking adjournment yet again. Owing to repeated request for adjournments as

a matter of course, the adjournment was declined and matter fixed for hearing on 15.11.2023 was again re-fixed for today in the interest of justice. None attended for the assessee. The matter was accordingly proceeded *ex parte*.

3. On perusal of the penalty order passed under section 271(1)(c) of the Act, it is seen that the Assessing Officer disputed the 'fair market value' of share premium received on share subscription by taking recourse to section 56(2)(viib) of the Act. The assessee, in the course of the assessment, asserted that fair market value has been determined under Rule 11UA of the Income Tax Rules, 1962 and such valuation is duly supported by the valuation report. The Assessing Officer however, frowned upon the fair market value and observed that the assessee has received excessive premium on issue of shares to the extent of Rs.92,02,506/-. The Assessing Officer thus alleged 'concealment of income' to the aforesaid extent in the assessment order and proceeded to impose penalty under section 271(1)(c) of the Act. Pertinently, the AO however imposed penalty alleging default towards furnishing of 'inaccurate particulars of income'. The CIT(A) in the first appeal affirmed the action of the AO on the premise of 'furnishing of inaccurate particulars of income'.

4. In such backdrop, I see a little justification in the imposition of penalty. Firstly, the Assessing Officer has displaced the fair market value which was supported by valuation report. While the AO may possibly be right in making additions on the contour of section 56(2)(viib) of the Act in the given facts, such addition would not automatically lead to assumption of concealment alleged by the AO in the assessment order. The addition in the instant case is owing to variation in the perception of the valuer and that of Assessing Officer. The issue is apparently debatable to the core and no malafide intent can be imputed *per se*. Such addition could not be the basis for presence of culpability. Secondly, Assessing Officer has alleged 'concealment of particulars of income' in the assessment order which satisfaction derived is contrary to the facts on record. The assessee in the course of the assessment has provided the valuation report giving rise to the basis for

determination of fair market value. Thus it is difficult to comprehend any concealment of particulars. The satisfaction under section 271(1B) of the Act drawn by the AO in the course of assessment is clearly unfounded.

5. Besides, the AO has modified the basis for imposition of penalty from original allegation of concealment of income to “furnishing inaccurate particulars of income” in the course of penalty proceedings. Such act is also not tenable. Likewise, the CIT(A) is also not entitled in law to confirm the action of the AO *de horse* the satisfaction drawn in the course of assessment. On this count also, imposition of penalty fails.

6. Thus seen from any angle, the imposition of penalty under section 271(1)(c) of the Act in the present set of circumstances is unsustainable in law.

7. I thus set aside the first appellate order and direct the AO to reverse and cancel the penalty.

8. In the result, appeal of assessee is allowed *ex parte*.

Order was pronounced in the open court on 22.11.2023

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:- 22.11.2023

*Priti Yadav, Sr. PS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI