

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.289/RPR/2023  
निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of Income Tax-1(1),  
Raipur (C.G.)

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Smt. Renu Behl  
9, Maruti Solitaire, Kachna Road,  
Shankar Nagar, Khamardih,  
Raipur (C.G.)-492 001  
PAN : ADFPB7211A

.....प्रत्यर्थी / Respondent

Assessee by : None  
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 09.10.2023

घोषणा की तारीख / Date of Pronouncement : 11.12.2023

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the revenue is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 27.06.2023, which in turn arises from the order passed by the A.O under Sec.271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') dated 13.02.2022 for the assessment year 2012-13. The revenue has assailed the impugned order on the following grounds of appeal:

"1. Whether on the facts and in the circumstances of the case the Id. CIT(A) is justified in -- deleting the penalty imposed by the AO u/s 271(1)(c) which has direct nexus with the evasion of tax emerged out of claim of bogus LTCG on penny stock by not following the CBDT, New Delhi's Circular No.23 dated 06.09.2019 wherein it has been decided by the Board that notwithstanding anything contained in any of circular issued under section 268A of the Income Tax Act, 1961 specifying monetary limits for filing of appeals of department appeal before ITAT/HC/SC, appeals may be filed on merits as an exception to said circular in cases involved in organized tax evasion activity?

2. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A), NFAC is justified in deleting the penalty imposed by the AO amounting to Rs. 2,26,8611- for concealment of income whereas the Hon'ble Supreme Court in the case of MAK Data (P.) Ltd. Vs CIT reported in [2013] 38 taxmann.com 448 (SC)/[2013] 358 ITR 593(SC)/[2013] 263 GTR 1(SC) held that "Voluntary disclosure does not release assessee from mischief of penal proceedings under section 271(1)(c). In terms of section 271(1)(c), Assessing Officer has to satisfy whether penalty proceedings be initiated or not during course of assessment proceedings and Assessing Officer is not required to record his satisfaction in a particular manner or reduce it into writing "

3. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A), NFAC is justified in deleting the penalty imposed by the AO amounting to Rs.2,26,861/- for concealment of income whereas the Punjab & Haryana High Court in the case of Sanjay Aggarwal Vs CIT reported in [2011] 15 taxmann.com 34 (Punjab & Haryana)/[2012] 211 Taxman 178 (Punjab & Haryana)(MAG) it was held that "Assessee made disclosure during assessment proceeding under section 131(1) on 5-1-2006 and offered to

surrender amount attributable to him in investment in property. It was held that no immunity could be claimed by assessee from levy of penalty in terms of Explanation 5 to section 271(1)(c).”

2. Succinctly stated, the assessee had filed her original return of income for A.Y. 2012-13 on 05.10.2012, declaring an income of Rs.7,79,500/-. Subsequently, the case of the assessee was reopened u/s. 147 of the Act. Notice u/s. 148 dated 29.03.2019 was issued to the assessee. In response, the assessee had filed her return of income declaring an income of Rs.15,20,510/-, wherein, in addition to the original returned income, she had declared an additional income of Rs.7,41,008/- on account of the sale of shares.

3. The A.O., thereafter, framed the assessment vide his order passed u/s. 147 r.w.s. 143(3) of the Act dated 30.11.2019. The A.O., while culminating the assessment, initiated penalty proceedings u/s. 271(1)(c) of the Act. Also, the A.O. issued a “Show Cause Notice” (SCN) dated 30.11.2019 to the assessee, wherein she was called upon to show cause as to why a penalty for “concealment of particulars of income” may not be imposed upon her u/s. 271(1)(c) of the Act.

4. After the culmination of the assessment proceedings, the A.O. once again called upon the assessee to put forth an explanation as to why she may not be subjected to penalty u/s. 271(1)(c) of the Act. In reply, the assessee claimed that as she had in her return of income filed u/s. 148 of the Act had duly disclosed her income and paid taxes on the same; therefore, no penalty u/s. 271(1)(c) of the Act was called for in her case. However, the A.O. did not find favor with the explanation of the

assessee and vide his order passed u/s. 271(1)(c) of the Act dated 13.02.2022 imposed a penalty of Rs.2,26,861/- with respect to the additional income that she had disclosed in return of income filed u/s. 148 of the Act.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). The CIT(Appeals) observed that the income from the sale of shares, which the assessee had earlier claimed as exempt u/s.10(38) of the Act, was included by her in the return of income filed in response to the notice u/s. 148 of the Act, which, thereafter was accepted by the A.O. Based on the aforesaid facts, the CIT(Appeals) was of the view that the additional income offered by the assessee in her return of income could not be subjected to penalty u/s. 271(1)(c) of the Act. Apart from that, the CIT(Appeals) was of the view that the A.O., while initiating penalty proceedings, had failed to mention whether or not the same was initiated for “concealment of particulars of income” or “furnishing inaccurate particulars of income.” Also, the CIT(Appeals) drawing support from the judgment of the Hon’ble High Court of Punjab & Haryana in the case of CIT Vs. Rajib Garg, 313 ITR 256 (P & H), observed that a mere offering of additional income by the assessee in the return of income filed in response to the notice u/s. 148 of the Act, dehors any observation of the A.O. that the assessee had concealed income or had furnished inaccurate particulars of such income would not justify the imposition of penalty u/s. 271(1)(c) of the Act. Also, the CIT(Appeals) relied on the judgment of the Hon’ble Supreme Court in the case of CIT vs. Suresh Chandra Mittal (2001) 251 ITR 9 (SC) and observed that the Hon’ble Apex Court while approving the view taken by the

High Court had held that the initial burden lies on the revenue to establish that the assessee had concealed the income or had furnished inaccurate particular of such income, and the burden shifts to the assessee only if he fails to offer any explanation for the undisclosed income or offers an explanation which is found to be false by the assessing authority. The CIT(Appeals) observed that as in the present case, the assessee had duly disclosed her entire income, which, thereafter, had been regularized by the revenue, and no objection was raised by the latter as regards the bonafides of the explanation of the assessee, therefore, no penalty u/s. 271(1)(c) of the Act was called for in her case. Accordingly, the CIT(Appeals), backed by his aforesaid observation, vacated the penalty of Rs.2,26,861/- imposed by the A.O u/s. 271(1)(c) of the Act.

6. The revenue being aggrieved with the order of the CIT(Appeals) has brought the matter in appeal before us. As the assessee-respondent, despite having been intimated about the hearing of the appeal, had failed to put up an appearance before us; therefore, we are constrained to proceed with the matter as per Rule 25 of the Income Tax Appellate Tribunal Rules, 1963, and dispose of the appeal after hearing the Ld. Departmental Representative (for short 'DR') and perusing the material on record.

7. We have heard the Ld. DR and perused the orders of the lower authorities. Admittedly, it is a matter of fact borne from the record that as the assessee had in her return of income filed u/s. 139(1) of the Act dated 05.10.2012, therein claimed, Long Term Capital Gain (LTCG) on sale of 2500 shares of M/s. Blue Print Securities

Ltd. as exempt u/s. 10(38) of the Act; therefore, her case was reopened u/s. 147 of the Act. Notice u/s. 148 dated 29.03.2019 was issued to the assessee. In compliance, the assessee had filed her return of income u/s. 148 of the Act, declaring an income of Rs.15,20,510/- wherein she had offered for tax the gain on sale of shares of Rs.7,41,008/- which was earlier claimed by her as exempt in the original return. As observed hereinabove, the A.O., while framing the assessment u/s. 147 r.w.s. 143(3) dated 30.11.2019 had initiated penalty proceedings u/s. 271(1)(c) of the Act. Thereafter, the A.O. vide his order u/s. 271(1)(c) dated 13.02.2022 had imposed a penalty of Rs.2,26,861/- (supra) with respect to the additional income of Rs.7,41,008/- (supra) that was offered by the assessee in her return of income filed u/s. 148 of the Act.

8. We have thoughtfully considered the issue, i.e., the sustainability of the view taken by the CIT(Appeals), who had vacated the penalty imposed by the A.O u/s. 271(1)(c) of the Act. As observed by the CIT(Appeals), and rightly so, as the assessee had offered LTCG on sale of 2500 shares of M/s. Blueprint Securities Ltd. as a part of her total income in the return of income filed in response to the notice u/s. 148 of the Act, therefore, the A.O., without establishing that the assessee had concealed her income, could not have saddled her with penalty u/s. 271(1)(c) of the Act. We, thus, in terms of our aforesaid observation, concur with the view taken by the CIT(Appeals), who had rightly vacated the penalty of Rs.2,26,861/- imposed by the A.O u/s. 271(1)(c) of the Act and uphold the same.

9. As a result, the appeal of the revenue is dismissed in terms of our aforesaid observations.

Order pronounced in open court on 11<sup>th</sup> day of December, 2023.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 11<sup>th</sup> December, 2023  
\*\*\*SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.