

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.839/Del/2019

(Assessment Year: 1996-97)

Jet Lite (India) Ltd, 13, Community Centre, Yusuf Sarai, New Delhi (Appellant)	Vs. DCIT, Central Circle-6, (now CC-1), New Delhi (Respondent)
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PAN:AADCS4480L

Assessee by :	None
Revenue by:	Mr. Waseem Arshad, CIT DR

Date of Hearing	06/03/2024
Date of pronouncement	11/03/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.839/Del/2019 for AY 1996-97, arises out of the order of the Commissioner of Income Tax (Appeals)-23, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 124/14-15 dated 18.12.2018 against the order of assessment passed u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.03.2014 by the Assessing Officer, DCIT, Central Circle-1, New Delhi (hereinafter referred to as 'ld. AO').

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

"1) On the facts and in the circumstances of the case and in law, the learned CIT(A) has not given categorical finding confirming (or otherwise) the penalty levied by A.O. amounting to Rs.4,53,700/- (first and the only ground of appeal for adjudication) and consequently, the present order under consideration deserves to be quashed.

2) On the facts and in the circumstances of the case and in law, the learned CIT(A) enhanced the base for imposition of penalty to include deposits in the

name of persons, which were not considered by the A.O. in the order imposing penalty which action of learned CIT(A) is beyond jurisdiction for, having not confirmed the order of penalty of A.O., the learned CIT(A) could not have proceeded to enhance the base.

3) On the facts and in the circumstances of the case and in law, the learned CIT(A) enhanced the penalty without the law empowering enhancement in terms of Section 251(1)(b) of the Act in contradistinction to Section 251(1)(a) of the Act, which particularly grants power of enhancement and which is absent conspicuously u/s. 251(1)(b) of the Act.

4) On the facts and in the circumstances of the case and in law, the enhancement made by learned CIT(A) is without the authority and jurisdiction having been guided by and at the instance of the Administrative Commissioner of Income Tax and the A.O.

5) On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in rejecting the appellant's application for admission of additional evidence under Rule 46A of the I.T. Rules, being evidence to substantiate the Ground of Appeal No. 4 above.

6) On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in passing the appellate order without considering the written submissions submitted via email dated 10th December, 2018.

7) On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in refusing to accept the appellant's arguments in the form of written submissions in DAK and passing the Order dated 18.12.2018 u/s. 250 of the I.T. Act.

8) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in increasing the base of levy of penalty in the background fact that the CIT(A) himself had given relief on quantum addition in respect of the same set of persons and consequently enhancement of penalty is a result of blatant change of opinion, which cannot result in levy of penalty.

9) Without prejudice, on the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in issuing a penalty enhancement notice dated 28.06.2018 without specifying the limb of section 271(1)(c) of the IT Act under which the penalty is proposed to be levied/enhanced, and consequently the enhancement of penalty is bad in law.

10) Without prejudice to the above, on the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in issuing a penalty enhancement notice dated 28.06.2018 even though the penalty enhancement had become time barred as per section 275(1A) of the I.T. Act.

11) On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in enhancing the penalty amount to 200% i.e. Rs.51,05,54,976/- and raising a Notice of Demand u/s. 156 of the I.T. Act of Rs.51,01,01,276/-, which he is not empowered to do under the said section.

12) Without prejudice to Ground No.1, and in situation of the learned Hon'ble Tribunal not granting relief in respect of said Ground No.1, and in the alternative, the confirmation of penalty imposed by learned CIT(A) is wrong on facts of the case and is against the established principles of law.

13) Without prejudice to Ground No.1, on the facts and in the circumstances of the case and in law, the learned CIT(A) has erred by passing a single order u/s. 250 of the I.T. Act for both upholding the penalty order passed by the learned A.O. (against which appeal was filed) as well as enhancing the penalty (which was not the subject matter of the appeal) in contravention to the law u/s. 271(1)(c) r.w.s. 274 of the L.T. Act requiring separate orders to be passed by the CIT(A) and consequently the order of enhancement of penalty deserves to be quashed.

14) On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not quashing the levy of penalty by the learned A.O. when the show cause notice u/s. 274 of the I.T. Act issued by A.O. is without specifying the limb of Section 271(1)(c) of the Act under which the penalty was proposed to be levied as required by the law laid down by the Hon'ble Supreme Court."

3. The notice issued to the assessee had been returned unserved with the postal remark 'left'. Hence, there is no point for waiting for the presence of the assessee and we proceed to dispose of this appeal by hearing the Id DR and based on materials available on record. The assessee has challenged the levy of penalty u/s 271(1)(c) of the Act in the instant case. The Id DR submitted that the additions made in the assessment have been duly confirmed by the Hon'ble Jurisdictional High Court and accordingly, the penalty has been rightly levied in the instant case.

4. We have gone through the order of the Id CIT(A) and we find that the Id CIT(A) in para 3.3 page 2 of his order had also mentioned that the Hon'ble Delhi High Court vide its judgement dated 15.09.2015 had confirmed the quantum additions made u/s 68 of the Act. The Id CIT(A) proceeded to enhance the levy of penalty also from 100% to 200% for which enhancement notice in terms of section 251(2) of the Act was issued to the assessee. This is a case wherein, the original addition made u/s 68 of the Act by the Id AO got deleted by the Id CIT(A). The order of the Id CIT(A) was upheld by this

Tribunal. Further, on revenue appeal, the Hon'ble High court reversed the order of ITAT and restored the assessment order.

5. We find that the Id CIT(A) had adjudicated the penalty appeal in the following manner:-

"5. As per the Form No. 35, the appellant has raised sole ground of appeal contesting that the AO has erred in facts and in law by passing penalty order. The various arguments put forward by the AR are discussed below.

6.1 Vide submission dated 28 April, 2016, the AR contested that the impugned penalty order does not have any reasoning or rationale to come to the conclusion that the appellant has concealed its income or given inaccurate particulars of income. The AR argued that the AO has not made out a case as to how the appellant has furnished inaccurate particulars of income or concealed particulars of income.

6.2 A perusal of the impugned order imposing penalty shows that in response to show cause notice dated 10.03.2014, the appellant submitted its applied dated 21.03 2014 which has been reproduced by the AO in the body of the impugned order (reference top para page #3). The plea of the appellant was that even after the above mentioned additions, the resultant assessed income is actually a loss figure and hence the appellant has not willfully concealed any part of the income with the intention to avoid tax. The second plea raised by the appellant was that the confirmed by the CIT (A) did not have any tax implications because the applicant has been incurring losses over these years.

6.3 The question as to whether the act of concealment of particulars of income or furnishing of inaccurate particulars is carried out willfully or not, is irrelevant because it has been well settled that after the deletion of the word "deliberately" from the relevant provisions, there is no need to consider whether it (the act of concealment of particulars of income or furnishing of inaccurate particulars) was willful or not. Therefore, first plea of the appellant has been correctly rejected by the AO.

6.4 Regarding the second plea, it is a trite that even if the resultant figure of the assessed income, after the additions under consideration, is a loss, the definition of "tax sought to be evaded" has been drafted in such a way that the figure of "tax sought to be evaded will not be zero. As per the Explanation 4 appended to section 271, it would be calculated as tax that would have been chargeable on the income In respect of which particulars are been concealed or inaccurate particulars have been furnished had such income been the total income. Hon'ble Supreme Court laid down the law of the land while delivering judgement in case of Commissioner of Income-tax, Ahmedabad Vs. Gold Coin Health Food (P.) Ltd. [2008] 172 Taxman 386 (SC) that provision of Explanation 4 appended to section 271 of the IT Act, 1961 as amended by the Finance Act, 2002 with effect from 1-4-2003 is applicable with the retrospective effect. Therefore, the AO has correctly rejected the second plea of the appellate.

6.5 In view of the above discussion, the argument of the AR that the AO has not made out a case as to how the appellant has concealed particular of income or furnished inaccurate particulars of income, does not hold any water. The reply tendered by the appellant before the AO did not raise this point, at all. Even independently, as stated above, in the assessment order (reference para #3.4 of the original assessment order), the AO has clearly mentioned are finding of fact that that the money belonging to the assessee company were channelized back in form of the dublous share (subscription) transactions. Other findings of facts returned by the he AO and summarized by Hon'ble Delhi High Court have been mentioned, earlier, in para 4.9, above. The appellant during the present appellate proceedings, presented no material which was produced before the AO to rebut there findings of fact. As long as there findings of fact remains un-rebutted, I find no fault in the action of the AO, in reaching the conclusion (as mentioned in the impugned order that the appellant had furnished inaccurate particulars of its Income which amounts to concealment thereof.

7. Vide submissions dated 20th September, 2016, the AR stated two things. First contention of the AR was that there is a calculation mistake in the figure of addition adopted by the AO. It is the argument of the applicant that the figure of the total addition calculated by the AO while passing the impugned order should be Rs 9,76, 233/- instead of the figure adopted by the AO (i.e. Rs. 9,86,233/-). This being a mathematical mistake, is accepted and the final calculation of amount of penalty would be made, accordingly. The second plea of the AR was that the SLP has been admitted by the Hon'ble Supreme Court against the order of Hon'ble Delhi High Court and therefore, reliance cannot be made on the order of Hon'ble Delhi High Court. This plea is not acceptable because the AR could not show that Hon'ble Supreme Court has stayed the operation of the order of Hon'ble Delhi High Court.

8.1 Vide submissions dated 23.11.2017, the appellant raised technical issues. It was the contention of the AR that penalty was initiated in the assessment order by way of single line which reads as, "Penalty proceedings under section 271(1)(c) are initiated separately". Nowhere, the AO has a specified as to whether the penalty was being Initiated for "concealment of particulars of income" or for "furnishing inaccurate particulars of income". The AR contended that the show cause notices issued did not specify as to under which a limb of section 271(1)(c) the penalty was proposed to be levied.

8.2 Before proceeding further, the question as to whether this kind of ground can be allowed to be raised under the aeges of simple ground that there was an error in the order of the AO? To my mind, if this kind of interpretation is subscription to, then there is absolutely no reason to have a procedure of filing grounds of appeal. This would make the process of filing grounds of appeal, as a part of Form No. 35, redundant. It is cardinal principle of interpretation that no interpretation is acceptable which makes provisions unworkable or redundant. Form No. 35 has been prescribed as a part of the Rule 45 of the Income Tax Rules, 1962. Any interpretation, which makes any part of Form No. 35, redundant is not acceptable.

8.3 Although, procedures of Civil Procedure Code, 1908 are not strictly applicable in case of proceedings under Income Tax Act, 1961, however, the basic principles of the proceedings under the I.T. Act, 1961 have been adopted from Civil Procedure Code, 1908. The grounds of appeal filed along with Form No. 35 are basically "pleadings" mentioned under various orders under Civil Procedure Code, 1908. It is a trite that basic rule of the pleadings is that the opposite party should not be taken by surprise. The opposite party has a right to know as to what is going to be the case which would be set up against it. In this case, the opposite party is the revenue. Therefore, non-raising of such an important ground, specifically along with the grounds submitted as a part of Form No.35 is not a simple error. It is also, as noted that the appellant has not submitted any petition or application for admitting additional grounds.

8.4 There is one more angle to the issue. The decision of initiation of penalty proceedings, was taken by the AO who has passed the original assessment order. The said assessment order was very much under appeal and therefore, if there was any grievance, the appellant had ample opportunity to raise it corresponding ground(s) at the time of filing the appeal against the original assessment order. Now, the question is, whether such ground can be raised in this appeal, at all.

8.5 The enabling section to file an appeal before a CIT(A) is section 246A, of the IT Act, 1961 which reads as under,

"246A. (1) Any assessee or any deductor or any collector aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against..."

8.6 It can be seen that the appellant should be aggrieved by the order under appeal. To my mind, it is implicit that the grievance has to be against any particular action which is part of the impugned order. It is undisputed that action to initiate penalty proceedings is certainly not part of the impugned order. In these circumstances, can it be said that the appellant was aggrieved by the impugned order, in the sense of the term used under section 246A? To my humble mind, the answer is "No". Of course, the plea that any impugned order was without jurisdiction. can be raised at any stage. However, it is not a plea against basic jurisdiction. It is the plea against the assumption of jurisdiction to impose a penalty. This cannot be treated at par with the question of basic jurisdiction.

9.1 There is another relevant question, "whether this ground can be raised as an additional ground".

9.2 It is undisputed position that as per basic scheme of the IT Act, 1961, every matter is supposed to attain finality as early as possible. This finality is to be respected and it is only disturbed in special circumstances where substantial revenue which is due to the exchequer legitimately, is at stake.

9.3 Claims made by the assessee are supposed to be checked/verified/investigated by the revenue which has limited resources at its command.

9.4 Depending upon the position adopted by the assessee, the revenue may require to initiate certain processes. However, powers of revenue authorities are circumvented by time limitation in these respects.

9.5 It is trite that one cannot be allowed to do something indirectly which is prohibited directly. The reliance is placed on the decision of Hon'ble Delhi High Court In case of MTNL Vs. TRAI AIR 2000 Delhi 208.

9.6 That is why, every claim has to be made at the Rol stage (of course in cases at Rol stage) and every of appeal is to be taken at the first appellate stage and must emanate from of Assessment order/proceedings.

9.7 A verification is required at the time of filing Rol or revised Rol or Form No. 35.

9.8 The Rule 46A of the IT Rules, 1962 debars acceptance of new evidences, except in cases where at assessment stage either AO refused to accept the same or the assessee was debarred from filing the same by reasons beyond his/her control.

9.9 The celebrated ratio of Hon'ble SC in case of Goetze India Ltd Vs CIT 2006-TIOL-198-SC-IT re-affirms the above stated position and specifically debars the AO to accept any claim otherwise than by way of revised Rol.

9.10 As per section 124(3), the jurisdiction can be challenged within limited time period (maximum one month from date of receipt of relevant notice). The relevant portion of the section is reproduced as under.

"(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer-

(a) where he has made a return under sub-section (1) of section 115WD or under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section 115WE or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier;

(c) where an action has been taken under section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2)

of section 153C or after the completion of the assessment, whichever is earlier."

9.11 Another celebrated ratio of Hon'ble SC in case of GKN Driveshafts (India) Ltd Vs ITO [2002] 125 TAXMAN 963 (SC) re-affirms the above stated position by laying down that after filling of RoI, if assessee reasons for issuing notices, the Assessing Officer is bound to furnish reasons within a reasonable time and on receipt of reasons, the assessee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order.

9.12 The Hon'ble SC in case of Goetze India Ltd Vs CIT(supra) also clarified the ratio of another celebrated judgment in case of National Thermal Power Company Ltd. v. CIT [1998] 229 ITR 383, that the ITAT has power to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised are already before the Tribunal.

9.13 Hon'ble SC in case of Addl. CIT VS GURJARGRAVURES P. LTD. [1978] 11 ITR 1 (SC) held that fresh claim was not to be entertained at appellate stage as it was not made at the AO stage nor there was any material to support the same. It was immaterial that such claim was allowed in next year.

9.14 There is no quarrel that courts have ruled that appellate authorities have powers to entertain new claim provided the fact on the basis of which the issue of law can be raised are already before the Appellate Authority.

9.15 However, the basic jurisdiction of CIT(A) is from 246A which drives jurisdiction from the position that the appellant(assessee) should be aggrieved by the order of the lower authority(impugned order). Once a ground has not been taken before lower authority, the question of being aggrieved does not arise. Therefore, in normal course, these grounds are beyond the scope of the appeal as per provisions contained in section 246A.

9.16 As a natural corollary, it is necessary to pin point with reference to the impugned order as to where exactly the lower authority erred. However, in present case, the appellant has failed to do so.

9.17 The original assessment (quantum) order (as a part of which the action of initiation of penalty, was taken) which is sought to be brought under this appeal(by this additional ground) is not part of the impugned order.

9.18 Therefore, the said power of CIT(A) (to admit additional grounds) is only in realm of exception and therefore, very heavy onus is upon the appellant to show (cumulatively) that

i) beyond any show of doubt, he/she/it is not at fault (at all),

ii) There exist really exceptional circumstances where exercise of this power is necessary, and

iii) No prejudice shall be cast upon the revenue if such claim is entertained.

9.19 From the above, it is clear that the first requirement for exercise of this power, judicially, is that assessee is obliged to demonstrate that he/she/it was stopped by factors beyond his/her/its control to make such claim at the earlier occasion and after wards those factors continued to stop it from making such claim till the date on which the claim was made by the assessee by way of the application under consideration. It is noted, that as such the appellant could have easily raised such ground during the penalty proceedings. It is not that the opportunities were not available. The appellant did submit reply during the penalty proceedings which has been reproduced by the AO is a part of the impugned order. There is no quarrel on the fact that the appellant was having luxury of advice of the best professionals. It is also not under dispute the appellant did not raise this issue during the penalty proceedings. Also, it was not raised at the time of filing Form No. 35 (on 25.04.2014) Therefore. the appellant certainly, owes an explanation to the revenue as to what prevented the appellant to raise it at the earlier opportunities i.e. either at the time of appeal against original assessment order or during penalty proceedings.

9.20 In the present case appellant has not demonstrated that

i) it was stopped by factors beyond his/her/its control to raise such ground at the earlier occasion and

ii) after that the factors continued to stop it from raising such ground till date the claim was made by the appellant by way of the application under consideration.

9.21 The appellant has also not demonstrated that there existed really exceptional circumstances where exercise of this power is necessary.

9.22 The revenue is prejudiced because examination at earlier point would have lead to re-initiation of penalty proceedings in course of passing orders giving appeal effect or set-aside assessment proceedings.

9.23 In view of the above discussion, these grounds of appeal are liable to be refused to be entertained as additional grounds (even if the appellant comes up with application of admitting addition ground).

9.24 Without prejudice to the above stated technical position, it is noted that on merits, the contention of the appellant is without any substance. Although it was onus of the appellant to prove identity and creditworthiness of the share subscribers and genuineness of the transaction, however, to begin with, vide notice dt. 10.09.1998, the AO requested the appellant to furnish details in respect of persons to who shares worth Rs. 25,000/- or more were issued during the Previous year relevant to the assessment year under consideration.

9.25 From perusal of a copy of such list as submitted by the AR (as per page nos. 9-58 of the paper book filed on 15.12.2018) it is noted that it contains

minimal details-names and amounts of investment, only. Copy of page one such list is reproduced below.

Sl. No.	Name	Amount
1	RAJESH KUMAR	25000
2	IFRAN AHMAD BUCRESHI	25000
3	JUBAIL KISHORE MOOI	25000
4	JUBAIL KISHORE MOOI	25000
5	CHANDRA WAS HADYA	25000
6	UPHARANI YADAV	25000
7	M. E. YADAV	25000
8	PREK CHAND NAHJI	25000
9	MAN KATE BAI	40000
10	JADESH RAY SHARMA	25000
11	KACHU GOVAL	25000
12	ANWAR ALI	25000
13	SHREE LAL SARRAF	40000
14	MAN SETHAN CHOUDHARY	25000
15	HARI KISHAN CHAUDOLIVA	25000
16	BRISHNA HANO YADAV	25000
17	ANAND JAIN	25000
18	JAHNI SHAMAN LAKSHANAB	25000
19	SHYIND OAS SAHU	25000
20	BABU LAL PRAJAPATI	25000
21	NARANI HISHA	25000
22	AJAY CHAUDHARY	40000
23	BRIJ KISHORE PRASAD	40000
24	BULI KISHORE PRASAD	25000
25	ANUM KUMAR	25000
26	RAMKESHWAR PRASAD	40000
27	KIRKAMI DEVI	40000
28	VIOYAWATI DEVI	30000
29	LALMAN FARDIT	25000
30	UMA SHANKER CHALHAN	40000
31	ABU SAIRA	40000
32	KHAWSHIZO JAHAN	25000
33	SHADIYAH ANJUN	25000
34	SINDESH SHARMA	25000
35	LALAN PRASAD SINHA	25000
36	LALAN PRASAD SINHA	25000
37	PARMESHVAR SINGH CHOUDHARY	20000
38	SHED NARAYAN NAI	20000
39	SKRISHNAND SINGH	51000
40	MAHAVATI DEVI	45000
41	UDAY SHANKAR GOVAL	25000
42	SURESH GOLA	25000
43	SMT HIMMALA SHARMA	25000
44	JAHID HUSSAIN	25000
45	RATHA ARYA	25000
46	SUSHI KUMAR	25000
47	ELSHY KRISHNA SANAY	25000
48	SHIV NATH SAH	25000
49	SHIV NATH SAH	25000
50	SHANU PRATAP SINGH	40000
51	RACHNA AGARWAL	40000
52	RAJIV AGARWAL	45000
53	RAGHU NATH PRASAD SINGH	45000
54	SHYI MADHUNATH PRASAD SINGH	25000
55	DR HAGESHWAN PRASAD SINGH	25000
56	ABDUL HANWAN	25000
57	RINKU KUMAR	25000
58	ANJANA SHARMA	25000
59	MAHIMA AGARWAL	40000
60	SATYA NARAYAN PO	25000
61	BHUPESHVAR SHARMA	25000

9.26 Thereafter, vide query on order sheet dt. 13.12.1998, the appellant was asked to furnish the basis of working of the premium of the shares at a high ratio of 10:41 and the method of allotment of shares to such large number of persons by way of private placement. In order to test check, on sample basis, as regards the identity and creditworthiness of the purported investors (share subscription) and genuineness of the transactions, vide order sheet entry dt. 18.12.1998, the appellant was asked to furnish addresses of top 100

shareholders who have been allotted shares. As per the assessment order, the appellant furnished addresses of only 92 such persons. I have also perused a copy of the list of such 100 investors (as produced by the AR during appellate proceedings page nos. 60 to 63 of the paper book). It is seen that some part of the list are not legible. Whatever addresses are legible, many of them are incomplete (like Ashok Jaisawal, Ghughli, District Maharaj Ganj - ref. S.No. 7 of the list at page no. 60 of the paper book). The AO sent notices u/s 133(6) of the I.T. Act, 1961 all such 92 persons. Out of the 92 persons only 17 persons replied. 25 notices were received back with the remarks of postal authorities like "not known", "refused", "incomplete address", "dead", "left in definitely". The AO also noted that in the cases where replies were received (in response to notices issued u/s 133(6)), all the persons stated that the shares had been bought back by the company in the subsequent years. The AO also noted that in copy of share application form there was a clause that 75% of such shares were to be kept in the custody of M/s Sahara India, Lucknow. Therefore, the AO issued a show cause notice dt. 18.03.1999 asking the appellant as to why the addition should not be made u/s 68 in respect of entire amount (Rs. 55,55,89,359/-), purportedly received by way of share subscription. The AO has clearly mentioned (ref. para 3.2 of the assessment order dt. 26.03.1999) that vide the said show cause notice, the appellant was (again) given opportunity to prove identity, creditworthiness of the purported investors and genuineness of the transactions in respect of entire money purportedly, by way of share subscription. The replies given by the appellant has been reproduced in the assessment order itself. A perusal of these (reproduced) replies shows that

i) The appellant has only said that the identity and existence of 84 persons stands established.

However, it is not understood as to on the basis of which documents, this claim has been made.)

l) The appellant said that share application forms in case of 96 persons have been submitted.

(Remark of the under signed.)

However, it is not understood how submitting of share application form in case of private placement, could be treated as proof of identity and creditworthiness of the investor and genuineness of the transactions.)

iii) It has been mentioned by the appellant that due to time constraint, confirmation, (letters) could not be obtained and confirmation (letters) from only four shares holders were claimed to have been enclosed.

(Remark of the under signed.

Filing of only four confirmations in a case where there were 65285 investors (a list of 3025 investors who had been allotted shares worth Rs. 25000 or above has been submitted by the as per page nos. 09 to 58 of the paper book), speaks volumes.)

9.27 As stated above, Hon'ble Delhi High Court, while delivering its judgment dt 15.09.2015 (in appeal against quantum addition (assessment) order for this assessment year only) has summarized the finding of the AO to be of the following effect:

(i) The shareholders were allotted only 25% of the shares and 75% shares were retained by the collecting agent on the plea of getting the shares listed in the stock exchanges. The fact that 75% of the shares were not handed to the shareholders rendered the genuineness of the transactions doubtful.

(ii) All the persons who replied stated that they made the investment in cash.

(iii) Almost all the persons in their replies stated that they are agriculturists and their source of income was from agricultural activities. Excepting one, none of them were income tax assesseees.

(iv) Although there was no provision enabling a to buy-back shares, at least two persons had categorically stated that they had sold the shares back to Sahara. If the purchase of the shares by Sahara was made through cheque this made the transactions dubious.

(v) Sahara has concealed some very vital transactions relating to issue and transfer of the shares and had not come clean with all the relevant facts and documents for the purpose of ascertainment of the exact nature of the transactions."

9.28 Vide para 37 of the above stated judgment Hon'ble Delhi High Court has also concurred with the view taken by the AO after considering the material on record. The Hon'ble High Court has observed,

"The only conclusion that was possible in this regard was that reached by the AO, viz., that the Assessee was unable to establish the identities of the 65,185 persons in respect of an amount of Rs. 55,55,89,359. The onus on the Assessee of providing some prima facie material to establish the identity, genuineness and creditworthiness of the said 65,185 persons was not discharged by the Assessee." (emphasis supplied).

9.29 Thus, Hon'ble Delhi High Court has endorsed the conclusion arrived by the AO that the appellant has concealed some very vital transactions relating

to issue and transfer of the shares and had not come clean with all the relevant facts and documents for the purpose of ascertainment of the exact nature of the transactions.

9.30 It is also noted that during the penalty proceedings (before the AO) or during present appellate proceedings, it was never claim of the appellant that it was ready to produce these purported investors or any additional material regarding identity and creditworthiness of these purported investors or genuineness of these transactions. As stated above, the appellant filed application to admit a letter being internal correspondence of the department as additional evidence u/r 46A. However, the appellant did not make any application to produce any of these purported investors or any material regarding identity and creditworthiness of these purported investors or genuineness of these transactions, as additional evidence.

9.31 Therefore, it is clear that the allegation of the AR that nowhere, the AO has a specified as to whether the penalty was being initiated for "concealment of particulars of income" or for "furnishing inaccurate particulars of income", is baseless and I have no hesitation in returning a finding of fact that AO had clear satisfaction that appellant has concealed some very vital transactions relating to issue and transfer of the shares and had not come clean with all the relevant facts and documents for the purpose of ascertainment of the exact nature of the transactions which obviously covers both the limbs of section 271(1)(c) i.e. concealment of particulars of income well as furnishing of Inaccurate particulars.

9.32 Regarding, the plea that the show cause notice (dated 26.03.1999) does not specify as to which limb of section 271(1)(c) (i.e. concealment of particulars of Income or furnishing of inaccurate particulars) covers the case of the appellant, it can be seen from perusal of show cause notice dt. 26.03.1999 (at page no. 200-201 of the paper book- copy reproduced below) that the AO has ticked the portion, "have concealed the particulars of your income". Therefore, the allegation of the appellant is baseless and hence rejected.

Appeal No.124/14-15

000200

आयकर अधिनियम-1961 से प्रायः 271 के साथ पढ़ी गई प्रायः 274 के अधीन प्रेषण

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Record
1/25/98
31/3/98

आयकर अधिकारी, Income-tax Officer.

सेवा सं/To

Sahara India Airlines Ltd
1, Kapsorihala Complex
Aliganj Lucknow

दिनांक/Date
... 28.3.99

शुद्धि कर दिखाने का... के कारण से मैंने नहीं होना चाहिए कर...
के प्रमाण मुझे नहीं पता है कि आपने :-
Whereas in the course of proceedings before me for the assessment year 96-97
it appears to me that you :-

अपना उचित कारणों से यह आप विवरणी नहीं दी है जो आरटी प्रारंभिक आयकर अधिनियम,
1923 की 22(1), 22(2)/34 के अधीन दी गई सूचना के अनुसार देनी थी; या जो अधिनियम 1961 के
अधीन या आयकर अधिनियम, 1961 की धारा 139(2)/148 के अधीन दी गई सूचना के
अनुसार दायित्व करने की अपेक्षा उचित कारणों से
विना कारणों कि या धर्मों के अन्तर्गत धारा 139(1) या इन नगर की सूचना द्वारा अधिनियम
1961 के विवरणी नहीं दी है।

"have without reasonable cause failed to furnish me return of income which
you were required to furnish by a notice given under section 22(1)/22(2), 34 of the
Indian Income-tax Act, 1923 or which you were required to furnish under section
139(1) or by a notice given under section 139(2)/148 of the Income-tax Act, 1961.
No..... dated..... or have without
reasonable cause failed to furnish it within the time allowed and the manner re-
quired by the said section 139(1) or by such notice.

[Sd/- P. J. O.]

S No.	Argument raised by the AR	Remarks
1.	<p><i>Initiation of penalty was bad in law because it was initiated in the end of the assessment order without specifying any amount or limb of section 271(1)(c) i.e. whether it was case of "concealment of particulars" "furnishing particulars of income or furnishing inaccurate particulars</i></p>	<p><i>This has been discussed above. At the time of initiation of penalty proceedings there is no requirement of specifying quantum. It is matter of course of penalty proceedings which would decide the quantum in respect of which default is committed.</i></p> <p><i>Regarding, satisfaction, it has already been discussed and concluded that there was satisfaction. It has been endorsed by the Hon'ble High Court that the conclusion of the AO was there to the effect that appellant has concealed some very vital transactions relating to issue and transfer of the shares and had not come clean with all the relevant facts and documents for the purpose of ascertainment of the exact nature of the transactions which obviously covers both the limbs section 271(1)(c) i.e. concealment of particulars of income as well as furnishing of inaccurate particulars.</i></p>
2.	<p><i>There is no direction to initiate penalty proceedings in the assessment order, therefore, provisions of section 271(18) would not come to the rescue of the department.</i></p>	<p><i>As demonstrated above, during the course of the assessment proceedings, the AO had satisfaction that appellant had concealed some very vital transactions relating to issue and transfer of the shares and had not come clean with all the relevant facts and documents for the purpose of ascertainment of the exact nature of the transactions which obviously covers both the limbs section 271(1)(c) i.e. concealment of particulars of income as well as furnishing of inaccurate particulars. The AO also issued show cause notice u/s 274 r.w.s. 271 of the I.T. Act, 1961 alongwith the assessment order. Therefore, all the requirements of the law are fulfilled.</i></p>
3.	<p><i>The AR relied upon the ratio of CIT Vs. Virgo Marketing (P.) Ltd. 171 Taxman 156 (Del HC).</i></p>	<p><i>There is no quarrel with the ratio of said judgment of Hon'ble Delhi High Court. In para 8 of the judgment, the Hon'ble High Court has observed as under:</i></p> <p><i>"There is nothing to suggest that the Assessing Officer had applied</i></p>

		<p><i>his mind to the question about which facet of Section 271(1)(c) of the Act is applicable to the case and for what act of omission or commission by the assessed. Merely to say that the assessed had adopted an illegal device to avoid his tax liability is neither here nor there. The assessed had filed its returns and had disclosed all material facts of the case and had concealed nothing in its returns. If the Assessing Officer takes a view contrary to that expressed by the assessed, it does not per se mean that the assessed has adopted an illegal device for reducing its tax liability."</i></p> <p><i>Hon'ble High Court has made itself clear in para 10 of the judgment that the AO should apply his mind and there should be reasons as to why penalty is being initiated.</i></p> <p><i>This ratio has certainly been complied with in the facts and circumstances of the case because as demonstrated above, during the course of the assessment proceedings, the AO applied his mind and reached to the conclusion that appellant had concealed some very vital transactions relating to issue and transfer of the shares and had not come clean with all the relevant facts and documents for the purpose of ascertainment of the exact nature of the transactions which obviously covers both the limbs section 271(1)(c) i.e. concealment of particulars of income as well as furnishing of inaccurate particulars.</i></p>
<p>4.</p>	<p><i>The AR relied on the ratio of CIT Vs. Rampur Engineering Ltd. 176 Taxman 211 (Del HC) FB.</i></p>	<p><i>There is no quarrel with the ratio of said judgment of Hon'ble Delhi High Court. In para 9 of the judgment the Hon'ble High Court has observed as under:</i></p> <p><i>"9. In our opinion, the legal position is well settled in view of the Supreme Court decisions in</i></p>

		<p><i>Commissioner of Income Tax, Madras, and Anr. v. S.V. Angidi Chettiar (supra) and D.M. Manasvi v. Commissioner of Income Tax, Gujarat, II Ahmedabad (supra), that power to impose penalty under Section 271 of the Act depends upon the satisfaction of the Income Tax Officer in the course of the satisfaction about the existence of the conditions specified in clauses (a), (b) and (c) before the proceedings are concluded. It is true that mere absence of the words "I am satisfied" may not be fatal but such a satisfaction must be spelt out from the order of the Assessing Authority as to the concealment of income or deliberately furnishing inaccurate particulars. In the absence of a clear finding as to the concealment of income or deliberately furnishing inaccurate particulars, the initiation of penalty proceedings will be without jurisdiction. In our opinion, the law is correctly laid down in Ram Commercial Enterprises (supra) and we are in respectful agreement with the same.</i></p> <p><i>The reference is answered accordingly."</i></p> <p><i>This ratio has certainly been complied with in the facts and circumstances of the case as demonstrated above, during the course of the assessment proceedings, the AO had satisfaction that appellant had concealed some very vital transactions relating to issue and transfer of the shares and had not come clean with all the relevant facts and documents for the purpose of ascertainment of the exact nature of the transactions which obviously covers both the limbs section 271(1)(c) i.e. concealment of particulars of Income as</i></p>
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		<i>well as furnishing of Inaccurate particulars.</i>
5.	<i>The (impugned) order imposing A penalty was passed in pursuing to notice dt. 10.03.2014 (at page no. c 202 of the paper book) and not as c per the penalty proceedings initiated vide show cause notice dt. 26.03.1999.</i>	<p><i>As discussed above, while passing the assessment order dt. 08.03.2002 {in pursuance of the direction of the CIT(A) vide appellate order dt. 03.03.2000, setting aside the issue to the file of the AO), the AO has noted, "penalty proceedings have already been initiated in original assessment proceedings and are pending as appeal has been filed before the ITAT". Therefore, it is clear that the impugned order imposing penalty has been passed in the proceedings initiated in the original assessment proceedings (which culminated into passing of assessment order dt. 26.03.1999).</i></p> <p><i>There is no assessment order which has been passed on 10.03.2014. Therefore, the argument of the AR that notice 10.03.2014 asking to show cause as to why penalty u/s 271(1)(c) should not be imposed is indicating fresh initiation of penalty is only figment of imagination of the AR.</i></p>
6.	<i>Impugned order imposing penalty As is not speaking order.</i>	<p><i>As discussed above, the show cause notices were issued and the reply tendered by the appellant has been reproduced in the order and reasons of rejection of the appellant's reply have been mentioned in the impugned order imposing penalty. It is clear that the requirements of principles of natural justice has been fulfilled.</i></p> <p><i>The impugned order has relied upon the original assessment order in which the AO had satisfaction that appellant had concealed some very vital transactions relating to issue and transfer of the shares and had not come clean with all the relevant facts and documents for the purpose of ascertainment of the exact nature of the transactions which obviously covers both the limbs section 271(1)(c) i.e concealment of particulars of income as well as furnishing of inaccurate particulars. No doubt, penalty</i></p>

		<p><i>proceedings are separate proceedings where appellant has full right to produce evidences to show that the conclusion of facts (as well as law) reached during assessment proceedings were not correct. However, the appellant did not produce any such material during the penalty proceedings before the AO or during the present appellate proceedings before the undersigned. As stated above, during the penalty proceedings or during present appellate proceedings, it was never claim of the appellant that he is ready to produce any of the purported investor or any additional material regarding identity and creditworthiness of these purported investors or genuineness of these transactions. As stated above, the appellant filed application to admit a letter being internal correspondence of the department as additional evidence u/r 46A. However, the appellant did not make any application to produce any of the purported investor or to prove any material identity and creditworthiness of these purported Investors or genuineness of these transactions, as additional evidence.</i></p> <p><i>Therefore, there is no reason to not to rely on the findings of the facts returned by the AO during the original assessment proceedings.</i></p>
<p>7.</p>	<p><i>Since, the impugned order imposing penalty is confined to the amounts invested in names of 17 persons (in whose respect, the CIT(A) had confirmed additions at that point of time), therefore, the CIT(A) has no jurisdiction impose penalty in respect of the amounts invested in names of other persons.</i></p>	<p><i>As discussed above, in detail, the initiation of the penalty was in respect of entire addition made u/s 68 of the I.T. Act, 1961. During the penalty proceedings, neither there was any at representation by the appellant that on merits, penalty was not leviable regarding the cash credits from the other parties (other than the 17 s persons in whose respect the CIT(A) has er confirmed additions at that point of time), nor there is a finding of the AO to that effect. The entire addition u/s 68 was subject matter of penalty proceedings during course of which the impugned order has been passed. Nowhere, the AO asked to appellant to</i></p>

		<p><i>restrict its reply in respect of amounts invested in names of the said 17 persons. Had the AO passed order imposing penalty just after the assessment order, certainly, all the sums considered for the addition u/s 68 would have been dealt with in impugned order. Therefore, implicitly, entire sums consisting of addition u/s 68 have been dealt with by the AO in the impugned order. Since, at the time of passing impugned order, additions in respect of 17 persons were confirmed by the CIT(A) {in respect of the amounts in the names of rest of the persons were deleted by the CIT(A)}, the AO has calculated the figure of "tax sought to be evaded" by taking the figure of confirmed addition.</i></p> <p><i>Therefore, it is incorrect to say that the scope of CIT(A)s jurisdiction does not travel beyond penalty leviable in respect of additions made on account of receipt of purported investment from the said 17 persons in whose respect, the additions were confirmed by the CIT(A).</i></p>
<p>8.</p>	<p><i>Enhancement at the level of CIT(A) has barred by limitation because u/s 275(1A), it (enhancement) can be made within six months from end of the month in which the order of the High Court is received by the office of the Pr. CIT. The AO has failed to do an act {u/s 275(1A)}. The CIT(A) cannot do that act after expiry of limitation period.</i></p>	<p><i>The question is not about exercising power by the CIT(A) u/s 275(1A). The question is about the powers of the CIT(A) to correct the figure of amount of penalty to be lawfully imposed. Since, in the impugned order, there is implicit adjudication that the penalty is, in principle, leviable in respect of the entire amount added u/s 68 and quantum of penalty levied was dependent upon the amount of confirmed addition, therefore, the question is of adopting correct figure of calculation of "tax sought to be evaded", based upon the total figure of addition u/s 68 confirmed by the Hon'ble High Court.</i></p>
<p>9.</p>	<p><i>The names of the persons are not specified in respect of whom the sums under consideration of penalty, invested.</i></p>	<p><i>As per the scheme of the I.T. Act, 1961, it is required to be determined as to what is the figure (quantum) of income in respect of which either "particulars have been concealed" or "Inaccurate particulars have been furnished". In the present case, such figure is certainly ascertainable because it is equal to the</i></p>

		<p><i>figure of confirmed addition (which is not in dispute).</i></p> <p><i>As such, the names are available, as per the list submitted by the appellant before the AO (referred to in para 9.25). In any case it was responsibility to supply such names.</i></p>
<p>10.</p>	<p><i>Section 251(1)(b) {which is relevant in respect of appeals against order imposing penalty} talks about 'vary' in the penalty as against the word 'enhance' used in section 251(1)(a) (which is relevant in respect of appeals against an assessment order).</i></p> <p><i>Therefore, the CIT(A) does not have any power to enhance the figure of the penalty.</i></p>	<p><i>Section 251(1)(b) reads as under:</i></p> <p><i>"251. (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers-</i></p> <p><i>(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;</i></p> <p><i>.....</i></p> <p><i>(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;</i></p> <p><i>The language of the above stated provision in no way supports the import purported by the AR. The power to enhance is clearly provided, in of appeal against penalty.</i></p>

9.34 Regarding addition of Rs. 1,24,533/- made on account of disallowance made u/s 40A(3) of the I.T. Act, 1961, vide reply dt. 20.04.2016 (ref. page no. 11), the appellant stated that management of the appellant company has changed and therefore, some files including the file containing documents related to allowability of this addition got destroyed. The appellant contended that considering huge loss incurred by the appellant over the years, the appellant did not press this ground in appeal. The appellant also contended that it is a merely technical bridge and does not called for levy of penalty u/s 271(1)(c).

9.35 The arguments put forward by the appellant have been considered carefully. It is noted that no explanation regarding levy of penalty in respect of this addition was put up before the AO. There is no doubt that the expenditures are claimed to have been made by way of cash payments. The appellant has accepted that it does not have any document to support allowability of the expenditure under consideration. No doubt, penalty proceedings are separate proceedings where appellant has full right to produce evidences to show that the conclusion of facts (as well as law) reached during assessment proceedings were not correct. However, the appellant did not produce any material during the penalty proceedings before the AO or during the present appellate proceedings before the undersigned. Now appellant has

come up with a new story that the supporting document have been destroyed. Therefore, I find no reason to interfere in the action of the AO in concluding that inaccurate particulars have been furnished in respect of this income which also amounts to concealment quantum of confirmed of particulars of income.

9.36 Vide original assessment order dt. 26.03.1999, the AO made additions u/s 40A(3) amounting to Rs. 8,92,193/-. Which consisted of Rs. 3,33,138/- on account of 20% of the payments (totaling to Rs. 16,65,690/-) which were pointed out by its tax audited report being in excess of limit set by the section 40A(3). The AO also indentified further expenses totaling to Rs. 27,95,279/- being in excess of the said limit and disallowed 20% of the sum i.e. Rs. 5,59,055/-. Later on vide order dated 25.05.1999, passed u/s 154, the total of such payments (decided by the AO) was further increased to Rs. 34,17,944/-. Thus, the disallowance was increased by further amount of Rs. 1,84,533/-. The CIT(A) vide his order dated 23.02.2000, confirmed addition of Rs. 3,33, 138/- in respect of the payments pointed out by the tax audit report. However, set-aside (for adjudication) the portion of the addition made due to the payments detected by the AO being (in excess of the limit of section 40A(3)). Although, this order of CIT(A) speaks of setting aside the issue in respect of amount of Rs. 27,95,279/- (which was mentioned in original assessment order). However, the AO while passing the re-assessment order (dt. 08.03.2002) has considered and adjudicated upon the total amount of Rs. 34, 17,944/- (figure as per order u/s 154) and finally, made addition of Rs. 60,400/-, only.

9.37 While passing order dt. 09.11.2000 for giving effect to the appellate order (dt. 03.03.2000) of the CIT(A), the AO (erroneously) adopted figure of Rs. 4,57,672/- (instead of Rs. 3,33,138/-) as confirmed portion of this addition. Also, the re- assessment order calculated the reduction / relief with assumption that appellate order (dt. 03.03.2000) of the CIT(A), confirmed addition of Rs. 4,57,672/- (instead of Rs. 3,33,138/-), out of the addition made u/s 40A(3) and set-aside the balance portion. The appellant raised this issue (vide ground nos. 5 and 6) in the appeal filed before the CIT(A) (appeal no. 20/06-07) against the re-assessment order dt. 08.03.2002. However, at the appellate stage (before CIT(A)), the appellant did not press these grounds of appeal. Therefore, the position of confirmed additions out of the addition made u/s 40A(3), in the original assessment order, is as under:

i) Rs. 3,33, 138/-being 20% of the payments pointed out in tax audit report.

ii) Rs. 1,24,533/- being less relief granted by the AO while passing order dated 09.11.2000 for giving effect to the order of CIT(A) dt. 03.03.2000.

iii) Rs. 60,400/- being the amount re-added out of the set-aside portion of the addition, as per re-assessment order dt. 08.03.2002 (in pursuance of order of the CIT(A) dt. 03.03.2000).

9.38 The addition of Rs. 3,33,138/- was simple mistake of not making additions at the time of preparing computation of income, after the payments in excess of the limits set by section 40A(3) were identified by tax audit report. Therefore, a case of furnishing inaccurate particulars or concealment cannot be

made out. Also, the ratio of Hon'ble Supreme Court in case of Price Waterhouse Coopers Vs. CIT. 348 ITR 306 (SC) helps the cause of the appellant.

9.39 The addition of Rs. 1,24,533/-, was due to option of the appellant (not pressing the ground nos. 5 and 6 during the appeal proceedings against the re- assessment as per direction of CIT(A)) that this addition remained as part of assessed income. Therefore, no case of levy of penalty can be made out in respect of this amount.

9.40 Regarding addition of Rs. 60,400/- u/s 40A(3), due to disallowance of the 20% of expenses, it can be seen that this addition has been re-added as a result of re- assessment order dt. 08.03.2000 where the following payments were found to be via cash and (were) in excess of the limit set by section 40A(3). These payments were not specified in the tax audit report. It is because of the alertness and diligence of the AOs that this violation was defected. Therefore, it is hit by both limbs of section 271(1)(c) i.e. "concealment of particular of income" as well as "furnishing of inaccurate particulars". As penalty proceedings were initiated vide original assessment order dt. 26.03.1999, the AO was well within his limits to impose penalty in respect of the income represented by the said disallowance.

1 Mrs. Neera Radia for retainership	140000	14.08.95
2. -do-	50,000	18.02.95
3. -do-	50,000	15.02.96
4. -do-	40,000	29.02.96
5. Mukesh Gupta for Air Ticket Charges	22,000	09.01.96
Total	3,02,000	

9.41 In view of the above discussion, it is clear that the appellant has concealed particulars in respect of income mentioned below. Appellant has also furnished inaccurate particulars in respect of the said income.

S.No.	Description	Amount (Rs)
i)	The addition made u/s 68 in respect of share subscription money and confirmed by the CIT(A), as mentioned in the impugned order.	8,51,700/- (although the impugned order specifies the figure as 8,61,700/- but there is a calculation mistake. 1438200-576500 is equal to 851700 and not 861700)
ii)	[The addition made u/s 68 in respect of share subscription money and restored by the Hon'ble HC, as mentioned in the order giving appeal effect (to the Hon'ble HC's order) dated.	55 40 38 359/-
iii)	The addition made u/s 40A(3) and re- added by the AO, while passing the re-assessment order dated 08.03.2002.	60.400/-
Total		55.49,51,059/-

9.42 Therefore, the tax sought to be evaded comes to Rs. 55,49,51,059/- and leviable penalty works out to be as under {as mentioned in (enhancement) show cause notice dated 28.06.2018}.

Confirmed addition (Rs.)	Tax @40% (Rs.)	Surcharge Total (Tax + @15% of tax / Surcharge) (Rs.) (Rs.) (Tax sought to be evaded)	
55,49,51,059 [55,55,89,359 1,12,200 5,76,500 + 60,400 {uis 40A(3)}J	22 19 80,424	3,33,97,064	25,52,77,488
Minimum Penalty @100% (Rs.)		25 52,77,488	
Maximum Penalty @300 h (Rs.) 76 58,32,464			

9.43 The appellant was asked to show cause as to why penalty should not be levied upto the maximum i.e. @ 300% of the 'tax sought to be evaded', however, no reply has been tendered in this respect.

9.44 The evil consequences of tax evasion are manifold. Firstly, there is substantial loss of much needed public revenue, particularly in a welfare State like ours. Next there is the serious disturbance caused to the economy of the country by the piling up of mountains of black money, directly causing inflation. Then there is 'the large hidden loss' to the community by some of the best brains in the country being involved in the perpetual war waged between the tax-evaders and his expert team of advisers, lawyers and accountants on one side and the tax-gatherer and his perhaps not so skillful advisers on the other side. Then again there is the 'sense of injustice and inequality' which lax evasion arouses in the breasts of those who are unwilling or unable to profit by it'. Last but not the least is the ethics (to be precise, the lack of it) of transferring the burden of tax liability to the shoulders of the guileless good citizens from those of the tax evaders. It may, indeed, be difficult for lesser mortals to attain the state of mind of Mr. Justice Holmes, who said, 'Taxes are what we pay for civilized society. I like to pay taxes. With them I buy civilization'.

9.45 No doubt, law gives discretionary power to the AO to levy penalty-from minimum being 100% of tax sought to be evaded to the maximum being 300% of tax sought to be evaded. However, such discretion has to be used judiciously. The order of the AO has to be a speaking order to explain (as to why the discretion has been used to the appellant in a particular way (a most lenient way in the present case). The simple case of 271(1)(c), say due to lack of knowledge of intricacies of tax laws, cannot be treated at par with tax evasion which is coupled by active action of routing his our money in form of purported share application money. On the top of it, the appellant is not cooperating with the law by not furnishing the necessary details. It is a trite that if anyone is not cooperating with the law, he or she cannot be allowed to ask for any leniency of the law.

9.46 As far as the additions u/s 68 are concerned, the AO concluded that he is constrained to presumed that money belongs to the appellant company was channeled back to it in form of share subscription. As stated above, Hon'ble

Delhi High Court, while delivering its judgment dt. 15.09.2015 (in appeal against quantum addition (assessment) order for this assessment year only) has summarized and upheld the findings of the AO to the following effect:

(i) The shareholders were allotted only 25% of the shares and 75% shares were retained by the collecting agent on the plea of getting the shares listed in the stock exchanges. The fact that 75% of the shares were not handed to the shareholders rendered the genuineness of the transactions doubtful.

(ii) All the persons who replied stated that they made the investment in cash.

(iii) Almost all the persons in their replies stated that they are agriculturists and their source of income was from agricultural activities. Excepting one, none of them were income tax assessees.

(iv) Although there was no provision enabling a company to buy-back shares, at least two persons had categorically stated that they had sold the shares back to Sahara. If the purchase of the shares by Sahara was made through cheque this made the transactions dubious.

(v) Sahara has concealed some very vital transactions relating to issue and transfer of the shares and had not come clean with all the relevant facts and documents for the purpose of ascertainment of the exact nature of the transactions."

9.47 Since, the addition u/s 68 constitutes about 99.99% of the income in respect of which there is a violation as per provisions contained u/s 271(1)(c) and therefore, it was serious attempt on part of the appellant to evade taxes legally due to the exchequer. In terms of severity of evasion, the case of appellant may not of highest degree but certainly it is not towards minimum, either. I therefore, proceed to enhance the penalty levied by the AO (@ 100%) to @ 200% of the tax sought to be evaded. The penalty @ 200% is to be worked out with regard to tax sought to be evaded. As a result, the total amount of penalty levied is enhanced to Rs. 51,05,54,976/- (@200% of Rs. 25,52,77,488). In other words, the amount penalty levied is enhanced by Rs. 51,01,01,276/- (Rupees fifty one crore, one lakh, one thousand, two hundred and seventy six), over and above the amount of penalty levied by the AO.

10. Ground no. 2 is enabling filing of additional grounds or altering existing grounds. Assessee did not submit any additional ground or altered grounds submitted alongwith Form-35. Therefore this needs no consideration."

6. Before us, the assessee was not able to controvert the aforesaid findings by providing cogent evidence. Hence, we do find any reason to interfere with the order of the Id CIT(A). Accordingly, the grounds raised by the assessee are dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 11/03/2024.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 11/03/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi