

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

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 842/Del/2023 : Asstt. Year : 2011-12

Dr. Arvind Kumar Taneja (HUF), 75, Golf Links, New Delhi-110003	Vs.	Income Tax Officer, Ward-52(4), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAAHD1546C		

**Assessee by : Sh. Shreyansh Kushwaha, Adv.
Revenue by : Sh. Kanv Bali, Sr. DR**

Date of Hearing: 24.04.2024

Date of Pronouncement: 07.05.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 24.01.2023.

2. Following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ['CIT(A)'] erred on facts and in law in passing order dated 24.01.2023 in Appeal No. CIT(A), Delhi-18/10119/2019-20 confirming the penalty of Rs.27,300/- imposed by the Income-tax Officer, Ward-52(4), Delhi [AO'] under section 271(1)(c) of the Income-tax Act, 1961 [the 'Act'].

2. That on the facts and circumstances of the case, the learned CIT(A) erred on facts and in law in passing the impugned order dated 24.01.2023 confirming the penalty imposed by the AO without considering the reply duly filed by the Appellant on 23.01.2023 as required by notice of

hearing dated 17.01.2023, which is in violation of settled principles of natural justice.

3. That on the facts and circumstances of the case, the learned CIT(A) erred on facts and in law in passing the impugned order dated 24.01.2023 confirming the penalty of Rs.27,300/- imposed by the AO for "concealment of income", because there is no satisfaction recorded in the assessment order for concealment of income.

4. That on the facts and circumstances of the case, the learned CIT(A) erred on facts and in law in passing the impugned order dated 24.01.2023 confirming the penalty of Rs.27,300/- imposed by the AO because there was no concealment or lack of bona fides on the part of the Appellant."

3. Penalty of Rs.27,300/- has been levied by the Assessing Officer for concealment of income u/s 271(1)(c) of the Income Tax Act, 1961.

4. At para no. 4 of the Assessment Order, the AO mentions that *"the assessee has furnished inaccurate particulars of his income therefore, penalty proceedings u/s 271(1)(c) are initiated on this account."*

5. We find that the para no. 4 of the penalty order reads as under:

"4. I am satisfied that this act of assessee tantamount to concealment of the particulars of income to the tune of Rs.2,28,923/- by not declaring the income in the return of income filed u/s 139(1) as well as ROI filed in response to the notice issued u/s 148 of the Income Tax Act, 1961. Accordingly, I find it is a fit case for imposing penalty in view of Explanation-III to Section 271(1)(c) of the Income Tax Act, 1961."

6. Explanation 3 of Section 271 reads as under:

"Explanation 3.—Where any person fails, without reasonable cause, to furnish within the period specified in sub-section (1) of section 153 a return of his income which he is required to furnish under section 139 in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (i) of sub-section (1) of section 142 or section 148 and the Assessing Officer or the Commissioner (Appeals) is satisfied that in respect of such assessment year such person has taxable income, then, such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his income in respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice under section 148."

7. The AO has recorded in concluding para 3.1 of the impugned penalty order that the *"revised computation of income was filed by the assessee only during the course of assessment proceedings and after issuance of notice u/s 133(6) of the I.T. Act, 1961 to share broker, M/s Religare, requiring to furnish details of ledger account of transactions made by the assessee. If the notice was not issued u/s 148 of the Income Tax Act, 1961 and information was not called for from the share-broker, the revised computation of income declaring short term capital gain could not be received. The assessee offered the income of Rs. 2,28,923/- for taxation only when he was confronted."*

8. Record before us shows that the Assessee was not made aware of the AO having issued notice u/s 133(6) of the Income Tax Act, 1961 to any person nor this fact was ever confronted by the AO to the Assessee. Neither the assessment order nor any of the notices issued by the AO to the Assessee during the assessment proceedings has any mention of notice u/s 133(6) issued to any person.

9. The case of the Assessee pertains to F.Y. 2010-11 and it was reopened on 31.03.2018, i.e. 7 years after the expiry of financial year and therefore, the Assessee was not in a position to trace out the old records to ascertain the exact date of purchase of shares so that he could claim the benefit of LTCG. Only because of this reason, and not because the Assessee had concealed or even left out any income for showing in the return, that the Assessee voluntarily offered the same as STCG.

10. The Assessee vide letter dated 20.12.2018 submitted before the AO is as under:

"A statement as issued by Religare Securities Limited is also enclosed for your kind records showing Capital Gains amounting Rs. 2,28,923/- earned on the Equity Shares and units of the Mutual Funds by the assessee. However the records are too old and the assessee is not sure about the date of purchase of each and every shares so to buy peace with the department the same is voluntarily offered to be taxed as Short Term capital gains earned on Equity Shares....."

11. The above position is evident from the assessment order itself, wherein it is recorded in para 4 as below:

"4. On perusal of computation of short term capital gain(STT) alongwith documentary evidences of the short term capital gain, filed by the assessee and copy of client Cash Global Net Outstanding Position Statement, issued by the share broker of the assessee, M/s Religare Securities Ltd. for F.Y. 2010-11, submitted by the assessee HUF, Short Term Capital Gains is computed com at Rs. 2,28,923/-. Therefore, addition under the head Short Term Capital Gain is made at Rs. 2.28,923/-....."

12. From the above, it is observed that the details were furnished by the Assessee itself. It was clearly stated that it was only because of record being old and untraceable, and only because in the absence of records, the Assessee was not sure about the date of purchase of each share, only because of these reasons, the Assessee, in order to buy peace, was showing this as STCG. The AO has not brought anything on record to prove whether the income is taxable under STCG or LTCG. Not even bank statement has been obtained by the revenue.

13. The facts and circumstances peculiar and specific to the instant case, the penalty levied u/s 271(1)(c) r.w. Explanation-3 of the Income Tax Act, 1961 cannot be sustained owing to the wrong invocation of the Explanation.

14. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 07/05/2024.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 07/05/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR