

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC' NEW DELHI
BEFORE MS MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 2101/DEL/2024

Assessment Year: 2008-09

M/S SUKUMAR BUILDWELL PRIVATE LIMITED, 914, 9 TH FLOOR, D-MALL, NETAJI SUBHASH PLACE, PITAMPURA, NEW DELHI-110034	Vs.	DCIT CENTRAL CIRCLE 26 NEW DELHI
PAN :AAICS7517H		
(Appellant)		(Respondent)

Assessee by	Ms Shilpi Jain, CA
Department by	Shri Sanjay Kumar, SR, DR

Date of hearing	21.10.2024
Date of pronouncement	29.10.2024

ORDER

PER MADHUMITA ROY, JUDICIAL MEMBER

The instant appeal filed by the assessee is directed against the order dated 19.03.2024 passed by the CIT(A)-29, New Delhi arising out of the penalty order dated 04.08.2021 passed by the DCIT, Central Circle-26, New Delhi, under Section 271(1)(c) of the Income Tax Act, 1961 for Assessment Year 2008-09.

2. The matter relates to an order of penalty imposed on the assessee dated 04.08.2021 issued by the DCIT, Central Circle-26, New Delhi, whereby and whereunder minimum penalty of Rs.27,71,505/- was levied upon the assessee on the ground of concealment of his income to the tune of Rs. 83,98,500/- for the year under consideration.

3. At the time of hearing of the instant appeal the Learned Counsel for the assessee submitted before us that the Assessing Officer has initiated the proceedings by issuing notices dated 29.03.2016 on the alleged ground of concealment particulars of income and furnishing the inaccurate particulars of income as well, the copies whereof has been duly submitted before us. It was further submitted by the Learned AR that in the Assessment order dated 29.03.2016 while making addition the Learned A.O. alleges non-disclosure of full particulars of income and furnishing the inaccurate particulars of income. Further that while imposing penalty the allegation was concealment of income by the assessee as recorded therein. Under this fact and circumstances of the matter, she argued that recording of satisfaction by the Assessing Officer that there was concealment of income or furnishing inaccurate particulars of income by the

assessee though sine qua non for initiation of penalty proceedings, the same has not been adhered to, rather the reasons first recorded on 29.03.2016 is on both the limbs. It is a settled principle of law that the Assessing Officer should issue notice against the assessee alleging violation of provision under Section 271(1)(c) of the Act and in this particular case the Assessing Officer was not sure while issuing show cause notice under Section 271(1)(c) of the Act whether he had to proceed on the basis of concealment of income or furnishing inaccurate particulars of the said income as is evident from the order dated 29.03.2016. The initiation of proceedings is violation of the prescribed provision under Section 271(1) (c) of the Act and thus liable to be quashed. In this regard she has relied upon many judgments passed by the different forum including the Coordinate Bench in the case of *Shri Naresh Kumar Jain Vs JCIT In ITA No. 1257 to 1261(Del)2023*, *Anand Kumar Jain Vs JCIT in ITA No 1317 to 1322/Del/2023*, *the PCIT Vs Shyam Sunder Jindal*, reported in 2023 156 taxmann.com625(Delhi) passed by the Hon'ble Delhi High Court and the judgment passed by the Hon'ble Apex Court in the case of *PCIT Vs Golden Peace Hotels and Resorts (P) Limited*, reported in (2021) 124 taxmann.com 249(SC).

4. Keeping in mind the fact of the matter, the judgments passed relied upon by the Learned AR have been duly considered by us which are found to be on the same line. In the judgment passed by the Hon'ble Supreme Court in the case of *Golden Peace Hotels and Resorts(P) Limited (supra)* that in the absence of specific recording by the Learned A.O. of satisfaction alleging either there was concealment of income or inaccurate particulars of income furnished by the assessee penalty proceedings ordered to be dropped by the Hon'ble High Court was upheld.

5. Further that in the case of *CCIT Vs Shyam Sunder Jindal* the Hon'ble High Court quashed the penalty proceedings initiated under Section 271(1)(c) in the absence of any specific limb under Section 271(1)(c) of the Act having been mentioned by the Assessing Officer in issuing the notice against the assessee. It is relevant to mention that the submission made by the Learned AR has not been able to be controverted by the Learned DR neither the Learned DR able to rely upon any judgment contrary to the ratio laid down by the above forum as discussed herein above in support of the case made out for quashing of the penalty proceedings initiated against the assessee.

6. Thus having heard the Learned Counsel appearing for the parties, having regard to the facts and circumstances of the matter particularly the notice dated 29.03.2016 issued under Section 271(1)(c) of the Act by the ITO Ward 29, New Delhi without mentioning specific limb under that particular provision of law which is sine qua non for initiating penalty proceedings against the assessee as observed by the Hon'ble Apex Court, the said notice is found to be non-maintainable, invalid. The proceedings is also found to be void, ab-initio and thus quashed.

7. The assessee's appeal is therefore allowed.

Order pronounced in the open court on 29th October, 2024.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

Dated: 29th October, 2024

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi