

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT, AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 2055/DEL/2016 [A.Y. 2007-08]

Late Mr. Davinder Kumar  
[Through Geeta Kumar]  
D-1075, New Friends Colony  
New Delhi

Vs.

The Dy. CI.T.  
Central Circle -15  
New Delhi

PAN - ACHPK 3992 J

(Applicant)

(Respondent)

Assessee By : Shri Neelkant Khandelwal, Adv

Department By : Shri Dayainder Singh Sidhu, CIT-DR

Date of Hearing : 26.11.2024

Date of Pronouncement : 26.11.2024

**ORDER**

**PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A) -29, New Delhi dated 25.01.2016 pertaining to A.Y. 2007-08.

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

"1 That on the facts and circumstances of the case and in law, the order passed by the Learned CIT(A), erred on law and on facts, to uphold the penalty order passed by the Assessing Officer (AO) u/s 271 (1) (c) of the Income Tax Act.

2. That the Ld. CIT (A), on the facts and circumstances of the case, erred in law as well as on facts, to uphold the penalty order despite noticing that the fact that penalty has been imposed on total income and not on the impugned addition in the assessment order.

3. That the Ld. CIT (A) also erred in law and as well as on fact that the impugned penalty order is passed against the principle of natural justice.

4. That the Ld. CIT (A) has erred in law and as well on as facts of the case that no incriminating material was found as a result of search, appellant was on death bed, and his only successor, Mrs. Geeta Kumar recorded in her statement u/s 132(4) of the Act that if any amount is there she would pay taxes thereon. In terms of her statement, she paid the taxes before the DDIT (Investigation) as per his advice, which is duly reflected in the return of income filed by the heir of the appellant.

5. That the Ld. CIT(A) has erred in law as well as on fact that the AO did not record its satisfaction qua any concealment of particulars of income in the return of income filed u/s 153A of the Act.

6. That the Ld. CIT (A), on the facts and circumstances of the case, erred in law and on facts, to adjudicated any ground of appeal on merits.”

3. In addition to the above grounds, the assessee has raised an additional ground of appeal which reads as under:

“The following ground of appeal is independent of, and without prejudice to the original grounds of appeal:

The Deputy Commissioner of Income-tax Central Circle 15, New Delhi (hereinafter referred to as the Assessing Officer) erred in issuing notice under section 274 r.w.s 271 of the Act (photo copy of notice enclosed).

The appellant contends that on the facts and in the circumstances of the case and in law, the impugned notice under section 274 r.w.s. 271 of the Act is issued in a mechanical manner by the Assessing Officer and hence, the issuance of the impugned notice under section 274 r.w.s 271 is invalid and bad in law and

consequently, the penalty order is also bad in law and needs to be quashed.

The appellant craves leave to add to, alter and/or amend the aforestated additional ground of appeal.”

4. The representatives of both the sides were heard at length, the case records carefully perused and we have duly considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules.

5. The assessee moved an application for admission of the aforesaid additional ground. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *NTPC Vs. CIT* 229 ITR 383 [SC].

6. The ld. CIT-DR opposed the admission of the additional ground.

7. We have considered the rival submissions on the admission of the additional ground. We find that the issue involved is purely a legal issue and does not require any verification or investigation as all the relevant material is already available on record. On a similar issue, the Hon'ble Supreme Court in the case of *NTPC* [supra] held as under:

**“Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.”**

8. In view of the above, respectfully following the findings of the Hon'ble Supreme Court [supra], the additional ground raised by the assessee is admitted.

9. The entire quarrel revolves around the validity of the penalty notice u/s 271(1)(c), which according to the assessee, does not specify the limb under which the penalty is levied.

10. Briefly stated the facts of the case are that the Assessing Officer initiated the penalty proceedings by way of issuance of the notice u/s 271(1)(c) of the Act. Disagreeing with the contentions raised by the assessee, Assessing Officer reached at the conclusion that the assessee has furnished inaccurate particulars of income in order to decrease its tax liability and thereby levied a penalty of Rs.1,81,18,016/- @ 100% u/s 271(1)(c) of the Act.

11. The assessee carried the matter by way of an appeal before the Id. CIT(A) who confirmed the penalty after dismissing the appeal.

12. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

13. The Id. AR for the assessee company challenging the impugned order contended that show-cause notice issued by the AO is not a valid notice to initiate the penalty proceedings as the assessee has not been made aware if it has concealed the particulars of income or has furnished inaccurate particulars of such income. The Id AR relied upon the order of the Hon'ble Jurisdictional High Court at New Delhi in the case of Pr. CIT Vs. *Gregarious Projects Pvt Ltd* and others vide judgment dated 22.11.2024 wherein the Hon'ble High Court relying upon the judgment of the Hon'ble Karnataka High Court in the case of *CIT Vs. Manjunath Cotton and Ginning Factory* 359 ITR 565 held that levy of penalty in the case of the assessee was not valid.

14. However, Id. DR for the Revenue in reply to the arguments addressed by the Id. AR for the assessee contended inter alia that the notice issued by the AO is not standalone document which is based on assessment order.

15. We have heard the rival submissions, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case. Undisputedly, penalty of Rs.1,81,18,016/- has been imposed u/s 271(1)(c) of the Act. In the backdrop of the aforesaid facts and circumstances of the case, order passed by the lower Revenue authorities and arguments addressed by the ld. AR to the parties, the sole question arises for determination in this case is:-

*"as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income during assessment proceedings while interpreting the provisions contained u/s 271(1)(c) of the Act?"*

16. A bare perusal of the notice u/s 271(1)(c) dated 13.03.2014 issued to the assessee goes to prove that assessee has not been specifically called upon to explain if he has concealed the particulars of income or furnished inaccurate particulars of such income. On identical circumstances, the Hon'ble High Court of Delhi in the case of **Sahara India Life Insurance Company Ltd** ITA No. 475 of 2019 order dated 02.08.2019 has held as under:

"21. The Respondent had challenged the upholding of the penalty imposed under Section 271(1)(c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in *CIT v. Manjunatha Cotton & Ginning Factory* 359 ITR 565 (Kar) and observed that the notice issued by the AO would be bad in law if it did not specify which limb of Section 271(1) (c) the penalty proceedings had been initiated under i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Karnataka High Court had followed the above judgment in the subsequent order in *Commissioner of Income Tax v. SSA's Emerald Meadows* (2016) 73 Taxman.com 241 (Kar), the appeal against which was dismissed by the Supreme Court of India in SLP No. 11485 of 2016 by order dated 5th August, 2016."

17. The Hon'ble Delhi Court recently in the case of *Gregarious Projects Pvt Ltd*, following the decision of *Sahara India Life Insurance* (supra) reiterated the same principle of law. Respectfully following the law laid down by Hon'ble High Court, we are of the considered view that when the assessee has not been specifically made aware of the charges leveled against him as to whether there is a concealment of income or furnishing of inaccurate particulars of income on his part, the penalty u/s 271(1)(c) of the Act is not sustainable.

18. In view of what has been discussed above, we are of the considered view that AO/CIT(A) have erred in levying/confirming the penalty of Rs. 1,81,18,016/- which is not sustainable in the eyes of law. Hence penalty is ordered to be deleted. Consequently, the appeal filed by the assessee is hereby allowed.

19. In the result, the appeal of the assessee in ITA No. 2055/DEL/2016 is allowed.

The order is pronounced in the open court on 26.11.2024.

Sd/-

**[MAHAVIR SINGH]**  
VICE PRESIDENT

Sd/-

**[NAVEEN CHANDRA]**  
ACCOUNTANT MEMBER

Dated: 26<sup>th</sup> NOVEMBER, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	