

आयकर अपीलिय अधिकरण
दिल्ली पीठ " जी ", दिल्ली
श्री महावीरसिंह, उपाध्यक्ष (तृतीयसदस्य),
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अवधेशकुमारमिश्रा, लेखाकार सदस्यके समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", DELHI
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT (THIRD MEMBER),
SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AVDRESH KUMAR MISHRA, ACCOUNTANT MEMBER

आअसं.2604/दिल्ली/2023(नि.व. 2016-17)
ITA NO.2604/DEL/2023(A.Y.2016-17)

Dy. Commissioner of Income Tax
22(2), R.No 225E, 2nd Floor, CR Building,
IP Estate, New Delhi 110002

..... अपीलार्थी/Appellant

बनाम Vs.

Sahil Vachani,
S-43, Panchsheel Park,
Delhi 110017
PAN: ADJPV-6597-K

.....प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by :S/Shri Anuj Garg & Narpat Singh, Sr.DR
प्रतिवादीद्वारा/ Respondent by : S/Shri Rohan Khare & Priyam
Bhatnagar, Advocates

सुनवाई की तिथि/ Date of hearing : 23/06/2025

घोषणा की तिथि/ Date of pronouncement : 23/06/2025

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)] dated 25.05.2023, for the Assessment Year 2016-17.

2. The solitary ground raised by the Revenue in appeal assailing the order of CIT(A) is:

1. “Whether on the facts and circumstances of the case, the Id. CIT(A) was correct in deleting the penalty of Rs. 1,45,59,592/- u/s. 271(1)(c) on account of furnishing inaccurate particulars of income with respect to the deduction claimed under section 54F of the Act.”

3. Shri Anuj Garg, Sr.DR appearing on behalf of the Department submitted that the assessee in the return of income had claimed the benefit of deduction u/s. 54F of the Act, without actual purchase or construction of a new asset i.e. a residential house. The assessee had merely entered into an agreement for construction of the house. The AO asked the assessee to explain and furnish evidence to substantiate claim of deduction u/s. 54F of the Act. The assessee vide letter dated 13.12.2018 surrendered the claim of deduction and agreed for the addition. Since, the assessee had made wrong claim of deduction, therefore the AO initiated penalty proceedings u/s. 271(1)(c) for furnishing inaccurate particulars of income and levied penalty of Rs. 1,45,59,592/- vide order dated 26.06.2019. The CIT(A) deleted the penalty levied u/s. 271(1)(c) only for the reason that the assessee has not litigated further and has offered the deduction claimed u/s. 54F of the Act to tax. Before the CIT(A), the assessee had raised a plea that the construction was delayed by the contractor and was beyond the control of assessee. However, before the AO in assessment proceedings as well as in penalty proceedings no such plea was made, hence, the plea made before the CIT(A) was an afterthought to wriggle out of penal provisions.

4. Per contra, Shri Rohan Khare, Counsel for the assessee vehemently defended the impugned order and prayed for dismissing appeal by the Department.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. During the period relevant to AY under appeal, the assessee had sold shares and had earned long term capital gain amounting to Rs. 9,01,50,051/-. The assessee claimed that he has made an investment of Rs. 7 crores in a residential house and accordingly claimed an exemption u/s. 54F of the Act. During the course of assessment proceedings, the assessee furnished a copy of agreement dated 29.07.2016 to substantiate that he had entered into a contract of purchase/construction of the property. The AO rejected assessee's claim of exemption u/s. 54F of the Act, as the new asset had never come into existence within the timespecified u/s. 54F of the Act. Penalty proceedings u/s. 271(1)(c) were also initiated for furnishing of inaccurate particulars of income. The assessee conceded before the Assessing Officer to forego the claim of exemption u/s. 54F and offered the amount claimed as an exemption to tax. The AO vide order dated 26.06.2019 levied a penalty of Rs. 1,45,59,592/- u/s. 271(1)(c) of the Act. The assessee carried the issue in appeal before the CIT(A). The First Appellate Authority vide impugned order deleted the penalty. Hence, the present appeal by the Revenue.

6. We find that the assessee had furnished all the relevant details in the return of income including Long Term Capital Gains on sale of shares. Hence, there was no concealment of income. The Assessing Officer has levied penalty for furnishing inaccurate particulars of income. It is not a case where the details furnished by the assessee were found to be incorrect with respect to LTCG earned during the year. It was the claim of exemption u/s. 54F which was found to be incorrect. If the claim of exemption u/s. 54F of the Act made by the assessee after disclosing all the relevant

information relating thereto is found to be unacceptable by the Revenue, under such circumstances penalty provision u/s. 271(1)(c) are not attracted. The Hon'ble Apex Court in the case of CIT vs. Reliance Petroproducts P. Ltd. 322 ITR 158 (SC) held:

“ It was tried to be suggested that section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that by itself would not, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature.

[Emphasized by us]

7. Thus, in facts of the case and in light of the decision of Hon'ble Apex Court, we find no infirmity in the order of First Appellate Authority in deleting levy of penalty u/s. 271(1)(c) of the Act. Ergo, the impugned order is upheld and appeal of the Revenue is **dismissed** being devoid of any merit.

PER AVDHESH KUMAR MISHRA, AM :

I am unable to persuade myself with the draft order dismissing the Revenue's appeal by holding that in view of the facts of the case and the decision of the Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. 322 ITR 158 there is no infirmity in the CIT(A)'s order deleting the penalty. However, the case in hands is distinguishable on facts from the

case of Reliance Petroproducts Pvt. Ltd. 322 ITR 158. My Ld. Brother did not appreciate the full facts of the present case though the ITAT is final in factual matters. Thus, I find it pertinent to mention the complete facts of the case for proper appreciation of the case in hand.

2. For brevity, facts of the case mentioned in the draft order is not reiterated here. In continuation with the facts mentioned in the para-5 of the draft order, following bare facts, which left out to be mentioned therein though crucial, are as under: -

- a. The respondent/assessee, an individual, sold shares for Rs.10,00,00,000/- resulting Long Term Capital Gains of Rs.9,01,50,051/-. For claiming deduction under section 54F of the Act against the Long-Term Capital Gains of Rs.9,01,50,051/-, the respondent/assessee made initial payment of Rs.7.00 Crores out of agreed purchase consideration of Rs.7.25 Crores for acquiring the residential property at plot No.25, Property No. 226 (old) 222/200 (New), Rajpur Road, Dehradunas per the agreement, dated 27/29 July, 2016, with Trophy Estates Private Limited.
- b. The respondent/assessee is the Director of Trophy Estates Private Limited since 2005 onwards, whom the initial payment of Rs.7.00 Crores out of purchase consideration of Rs.7.25 Crores, was made

for the property. Normally, no prudent man will do such initial advance payment to any independent builder/unrelated parties.

- c. No documentary evidence was brought on the record to demonstrate that the construction got delayed due to the builder as claimed by the assessee before income tax authorities during the assessment and penalty proceedings. Similarly, no evidence/material was brought on the record to justify the claim of the assessee that the builder had made sincere efforts to complete the construction work in time. No documentary evidence of sanctioned of map of construction over the said plot No.25, Property No. 226 (old) 222/200 (New), Rajpur Road, Dehradun was brought on the record. However, the details available in public domain clearly show that Trophy Estates Private Limited got map sanctioned of 62 flats, by the competent authority, on part of the Property No. 226 (old) 222/200 (New), Rajpur Road, Dehradun and also got completion certificates, by the competent authority, of residential units including independent houses/bungalow and flats during FY 2017-18 onwards. However, the plot No.25, Property No. 226 (old) 222/200 (New), Rajpur Road, Dehradun which belonged to the assessee did not figure out in the list of maps sanctioned and completion certificates issued by the competent authority since FY 2017-18 onwards.

- d. Basically, the assessee and Trophy Estates Private Limited, seller/builder are under the control of the assessee; therefore, the delay in the construction cannot be exclusively assigned to Trophy Estates Private Limited.
 - e. The assessee failed to bring the copy of approved/sanctioned map (for construction over the plot by the Competent Authority) prior to the date of initial payment of Rs.7.00 Crores.
 - f. The CIT(A)'s order is not properly reasoned at all.
3. The para-6& 7 of the draft order is reproduced as under: -

“6. We find that the assessee had furnished all the relevant details in the return of income including Long Term Capital Gains on sale of shares. Hence, there was no concealment of income. The Assessing Officer has levied penalty for furnishing in accurate particulars of income. It is not the case where the details furnished by the assessee were found to be incorrect with respect to LTCG earned during the year. It was the claim of exemption u/s. 65F which was found to be incorrect. If the claim of exemption u/s. 54F of the Act made by the assessee after disclosing all the relevant information relating thereto is found to be unacceptable by the Revenue, under such circumstances penalty provision u/s. 271(1)(c) are not attracted. The Hon’ble Apex Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 (SC) held:

‘It was tried to be suggested that [Section 14A](#) of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood

in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under [Section 271\(1\)\(c\)](#). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under [Section 271\(1\)\(c\)](#). That is clearly not the intendment of the Legislature.'

7. Thus, in facts of the case and in light of the decision of the Hon'ble Apex Court, we find no infirmity in the order of First Appellate Authority in deleting levy of penalty u/s. 271(1)(c) of the Act. Ergo, the impugned order is upheld and appeal of the Revenue is dismissed being devoid of any merit."

4. In view of the facts mentioned above in para-2, I am unable to persuade myself with the finding of the draft order that in facts of the case and in light of the decision of the Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. (supra), there is no infirmity in the order of CIT(A) deleting the penalty.

5. For proper appreciation of the case, it is pertinent to reproduce the relevant facts of Reliance Petroproducts Pvt. Ltd. (supra), in verbatim, as under: -

“4. The assessee is a company and the relevant Assessment Year is 2001-02. The Return was filed on 31.1.2001 declaring loss of Rs.26,54,554/-. This assessment was finalized under [Section 143\(3\)](#) of the Act on 25.11.2003 whereby the total income was determined at Rs.2,22,688/-. In this assessment the addition in respect of interest expenditure was made. Simultaneously penalty proceedings under [Section 271\(1\)\(c\)](#) of the Act were also initiated on account of concealment of income/furnishing of inaccurate particulars of income. The said expenditure was claimed by the assessee on the basis of expenditure made for paying the interest on the loans incurred by it by which amount the assessee purchased some IPL shares by way of its business policies. However, admittedly, the assessee did not earn any income by way of dividend from those shares. The company in its Return claimed disallowance of the amount of expenditure for Rs.28,77,242/- under [Section 14A](#) of the Act.

5. By way of response to the Show Cause Notice regarding the penalty in its reply dated 22.3.2006, the assessee claimed that all the details given in the Return were correct, there was no concealment of income, nor were any inaccurate particulars of such income furnished. It was pointed out that the disallowance made by the Assessing Authority in the Assessment Order under [Section 143\(3\)](#) of the Act were solely on account of different views taken on the same set of facts and, therefore, they could, at the most, be termed as difference of opinion but nothing to do with the concealment of income or furnishing of inaccurate particulars of such income. It was claimed that mere disallowance of the claim in the assessment proceedings could not be the sole basis for levying penalty under [Section 271\(1\)\(c\)](#) of the Act. **It was submitted specifically that it was an investment company and in its own case for Assessment Year 2000-01 the Commissioner (Appeals) had deleted the disallowance of interest made by the Assessment Officer and the Tribunal has also confirmed the stand of the Commissioner (Appeals) for that year and, therefore, it was on the basis of this that the expenditure was claimed. It was further submitted that making a claim which is rejected would not make the assessee company liable under [Section 271\(1\)\(c\)](#) of the Act. It was again reiterated that**

there was absolutely no concealment, nor were any inaccurate particular ever submitted by the assessee-company.

(Emphasis supplied)

6. The crucial facts of Reliance Petroproducts Pvt. Ltd. (supra) are that the AO levied penalty on the disallowance of interest incurred on the loans which was used to buy IPL shares, which had not resulted any taxable income. In the case of Reliance Petroproducts Pvt. Ltd. Similar disallowance of interest was also made in AY 2000-01, which was deleted by the CIT(A) and later the ITAT upheld the finding of the CIT(A). The Revenue is in appeal in the High Court. Hence, Reliance Petroproducts Pvt. Ltd. Claimed that the claim of interest in AY 2001-02 was not prima-facie non-genuine/bogus. In view of the facts mentioned above in para-5, the Hon'ble Supreme Court upheld deletion of the penalty by the High Court. Whereas in the case in hand, the claim of deduction under section 54F of the Act is for first time and there is no similar precedent of disallowance of deduction under section 54F of the Act and consequential appellate orders in the favour of the respondent/assessee. Thus, the case in hand and Reliance Petroproducts Pvt. Ltd. (supra) are held distinguishable on facts. Accordingly, the decision of the Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. (supra), in my considered opinion, is not applicable in this case being distinguishable widely on facts.

7. The respondent/assessee, Director of Trophy Estates Private Limited, controls the person/Trophy Estates Private Limited from whom the claimed residential unit bought for availing the deduction under section 54F of the Act. Thus, the respondent/assessee was fully aware of the fact that the said residential unit had not been built at all on the date of filing the ITR. Even then, he claimed deduction under section 54F of the Act in his ITR. Thus, he took the chance by claiming deduction under section 54F of the Act in his ITR even knowing the facts mentioned above in para-2 and also the fact that hardly 2-3% of ITRs are picked up for scrutiny. Therefore, the intention to evade tax was there while filing the ITR by concealing particulars of income. Even during the penalty proceedings, the assessee did not furnish plausible explanation. During the penalty proceedings, the respondent/assessee submitted that the delay in construction was due to contractor/builder; hence the claim under section 54F of the Act in his ITR was justified and the penalty was not leviable. However, the details available in public domain reveal that the construction works of builder was in full swing during the relevant period not only in cases of residential flats but also of independent dwelling units and commercial establishments/units. In absence of any plausible explanation either during the assessment proceeding or penalty proceedings, the claim under section 54F of the Act in his ITR was not bonafide mistake on the part of the assessee.

8. It is evident from the section 271(1)(c) of the Act that the words used are 'has concealed the particulars of his income' or furnished 'inaccurate particulars of such income'. Thus, both in case of concealment and inaccuracy, the phrase 'particulars of income' has been used. The legislature has not used the words 'concealed his income'. From this, it would be apparent that penal provision would operate when there is a failure to disclose fully or truly all the particulars. The words 'particulars of income' refer to the facts which lead to the correct computation of income in accordance with the provisions of the Act. Deduction under section 54F of the Act is crucial part of the computation of income in accordance with the provisions of the Act. The respondent/assessee claimed deduction under section 54F of the Act without disclosing full and complete particulars thereof. Hence, I am of the considered opinion that the respondent/assessee, by claiming non-genuine/bogus deduction under section 54F of the Act, particularly when he was fully aware the fact that he himself as director of Trophy Estates Private Limited had not handed over the said dwelling unit to himself as individual. It is nothing but transaction between left and right hands in such a way so that not only the deduction under section 54F of the Act can be claimed, by the respondent/assessee, without fulfilling the requisite conditions but also the sum paid by the respondent/assessee individual to Trophy Estates Private Limited can be used for the business purposes of the company.

9. No evidence has been brought on the record of the ITAT and also before the AO & CIT(A) to show/demonstrate the fact that the buyer and seller of the said dwelling unit has put into the sincere efforts in taking and handing over the possession of the said dwelling unit on or before filing of the ITR by the respondent/assessee. So when any fact material to the determination of an item as income or material to the correct computation is not filed or that which is filed is not accurate, then the assessee would be liable to penalty under section 271(1)(c) of the Act. The expression 'has concealed the particulars of income' and 'has furnished inaccurate particulars of income' have not been defined either in section 271 or elsewhere in the Act. However, notwithstanding the difference in the two circumstances, it is now well established that they lead to the same effect namely, keeping off a certain portion of the income from the ITR. According to Law Lexicon, the word "conceal" means:

"to hide or keep secret. The word 'conceal' is con+celare which implies to hide. It means to hide or withdraw from observation; to cover or keep from sight; to prevent the discovery of; to withhold knowledge of. The offence of concealment is, thus, a direct attempt to hide an item of income or a portion thereof from the knowledge of the income-tax authorities."

In Webster's Dictionary, "inaccurate" has been defined as: "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."

10. If the disclosure of facts is incorrect or false to the knowledge of the assessee and it is established, then such disclosure cannot take it out from the purview of the act of concealment of particulars or furnishing inaccurate particulars thereof for the purpose of levy of penalty. The penalty u/s 271(1)(c) of the Act is leviable if the AO is satisfied in the course of any proceedings under this Act that any person has concealed the particulars of his income or furnished inaccurate particulars of such income. The Hon'ble Supreme Court, in the case of Dharamendra Textile Processors 295 ITR 244, held that the penalty under section 271(1)(c) of the Act is a civil liability for which willful concealment is not an essential ingredient for attracting the civil liability. Here, the respondent/assessee did not disclose the full and complete facts with respect to claim of deduction under section 54F of the Act though he was fully aware of the bare facts about the status of construction of the residential property under reference of deduction under section 54F of the Act.

11. The case in hand is quite similar to that of the case of Zoom Communication (P.) Ltd. 327 ITR 510 and Escorts Finance Ltd. 328 ITR 44, wherein the Hon'ble Delhi High Cour theld that if the assessee makes a claim which is not only incorrect in law, but is also wholly without any basis and explanation furnished by him for making such a claim is not found to be bona fide, Explanation 1 to section 271(1)(c) of the Act would

come into play and assessee will be liable to penalty. The relevant para of decision of the Hon'ble Delhi High Court in the case of Escorts Finance Ltd. (supra) is pertinent to reproduce hereunder:

“15. We are in agreement with the aforesaid submission of learned counsel for the revenue. We fail to understand as to how the Chartered Accountants who are supposed to be expert in tax laws, could give such an opinion having regard to the plain language of section 35D of the Act. It would be important to note that assessee has nowhere pleaded that return was filed claiming benefit of section 35D of the Act on the basis of the said opinion. What was stated was that in the prospectus it was mentioned that as per the opinion given by the Chartered Accountants, the company would be entitled for relief under section 35D of the Act. Therefore, it is not the case of the assessee that while filing the return it got assistance from the Chartered Accountants who opined that the aforesaid expenses qualify for amortization over a period of 10 years under section 35D of the Act. That apart, when we find that it is not a case where two opinions about the applicability of section 35D were possible. Therefore, it cannot be a case of a bona fide error on the part of the assessee. As has been pointed out above, the relief available under section 35D of the Act to a finance company is ex facie inadmissible as that is confined only to the existing industrial undertaking for their extension or for setting up a new industrial unit. It was, thus, not a 'wrong claim' preferred by the assessee, but is a clear case of 'false claim'. In CIT v. Vidyagauri Natverlal [\[1999\] 238 ITR 91](#), Gujarat High Court made a distinction between wrong claim as opposed to false claim and held that if the claim is found to be false, the same would attract penalty. We may also take note of the following observations of the Supreme Court in the case of Union of India v. Dharamendra Textile Processors [\[2008\] 306 ITR 277](#). In such a case it is difficult to accept the plea that error was bona fide.”

12. The Hon'ble Gujarat High Court in the case of AM Shah & Co. 238 ITR 415 observed as under:

"there cannot be a straight jacket formula for detection of these defaults of concealment or of furnishing inaccurate particulars of income and indeed concealment of particulars of income and inaccurate particulars of income may at times overlap, as for example when half of the income under a particular head is not at all disclosed, that would be concealed to that extent while the remaining half which is in fact disclosed would, not being his complete disclosure amount to inaccurate particulars of income as regards that constituent item of the ITR. By the very nature of the assessment proceedings the AO while ascertaining the total income chargeable to tax would be in a position to detect the specific or definite particulars of income concealed or of which false particulars are furnished. Where in the constituents of income returned, such specific or definite particulars of income are detected as concealed, then even in the total income figure to that extent they reflect, it would amount to concealment to that extent. In the same way where specific and definite particulars of income are detected as inaccurate, then such figure will also make the total income inaccurate in particulars to the extent it does not include such income. Whether it be a case of only concealment or of only inaccuracy or both, the particulars of income so vitiated would be specific and definite and be known in the assessment proceedings by the AO, who on being satisfied about each concealment or inaccuracy of particulars of income would be in a position to initiate the penalty proceedings on one or both of the grounds of default as may have been specifically and directly detected. The opportunity of hearing given by the notice under section 271(1)(c), obviously is against such concealment and inaccuracy as is detected in the assessment proceedings".

13. The respondent/assessee, neither during the assessment proceedings nor penalty proceedings, submitted the details and documents justifying the genuineness of his claim under section 54F of the Act. In these circumstances, it does not lie in the mouth of the assessee that it was not concealing his income by furnishing inaccurate particulars thereof in the ITR. In the course of penalty proceedings, the respondent/assessee did not

bring any material before the Ld.CIT (A) to rebut the inferences drawn by the AO. Even then the CIT (A) allowed the appeal without discussing the merit of the case. The Ld. CIT (A) allowed the appeal as under:

“5.1 I have perused the order of Learned AO imposing penalty under section 271(1)(c) for misreporting of income or furnishing inaccurate particulars of income. In this regard, it is pertinent to mention that penalty proceedings are separate from main quantum appeal proceedings are to be adjudicated accordingly.

5.2 The appellant had filed return of income in which he had claimed deduction u/s 54F for sum of Rs.6,31,05,036/- which was denied by the learned AO.

5.3 The learned AO treated the same as furnishing inaccurate particulars of income and levied penalty of Rs.1,45,59,592/- u/s 271(1)(c) of the Act.

5.4 In this regard the appellant stated that it has not litigated the addition offered by it and it has also paid due taxes. The appellant submitted that the construction was delayed by the contractor which was beyond the control of the appellant and the same was not deliberately delayed. The appellant has paid interest on such additional tax payable.

5.5 The contentions of the appellant are considered and it is worth noting that there is provision for granting immunity against penalty in the Income Tax Act.

5.6 In view of the same I am of the considerate view that the appellant has provided reasonable cause because of which the construction of the house was delayed therefore, the penalty of Rs.1,45,59,592/- levied by learned AO should be deleted.

5.7 Accordingly, the appeal of appellant is allowed.”

[Emphasis supplied]

14. In terms of provisions of section 271(1)(c) of the Act read with explanation 1 thereto and the judicial pronouncements in the case of B.A. Balasubramaniam & Bros. Co. 157 CTR 556(SC); B.A. Balasubramaniam & Bros. 152 ITR 529 (Mad.); Mussadilal Ram Bharose 165 ITR 14 (SC); K.R. Sadayappan 185 ITR 49 (SC); Jeevan Lal Sah 205 ITR 244 (SC) and K.P. Madhusudanan 251 ITR 99(SC), it is well established that whenever there is difference between the returned and assessed income, there is inference of concealment. The explanation 1 to section 271(1)(c) of the Act raises a presumption that can be rebutted by the assessee with reference to facts of the case. Thus, the onus is on the assessee to rebut the inference of concealment. The absence of plausible explanation itself would attract penalty. The onus laid down upon the assessee to rebut the presumption raised under explanation 1 would not be discharged by any fantastic or fanciful explanation without any corroboratory evidence. Here, the respondent/assessee did not offer any proper explanation along with corroboratory evidence justifying the claim under section 54F of the Act. It is not the law that any and every explanation has to be accepted. The claim of delay on the part of builder in the case in the hand as mentioned by the CIT(A) did not get support from facts and any material on the record. Thus, in my considered view, the assessee has miserably failed to discharge the onus laid down in this explanation. The bonafide of the explanation of the

respondent/assessee as mentioned in the impugned order has not been proved during the proceedings in the ITAT.

15. The Hon'ble Supreme Court in the case of MAK Data P. Ltd 358 ITR 593 held that Under Explanation 1 to section 271(1)(c) of the Act, voluntary disclosure of concealed income does not absolve assessee of rigours of section 271(1)(c) of the Act if the assessee fails to offer an explanation which is bona fide and proves that all the material facts have been disclosed.

“9. We are of the view that the surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings has noticed that certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed, have been impounded in the course of survey proceedings under Section 133A conducted on 16.12.2003, in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The AO, in our view, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961.”

16. The Hon'ble Apex Court in the case of K. P. Madhusudhanan 251 ITR 99 affirmed the decision of the Kerala High Court. The Kerala High Court observed as follows:

"Section 271(1)(c) of the Income-tax Act, 1961, is attracted where, in the course of any proceedings under the Act, the Assessing Officer or the first appellate authority is satisfied that: (a) any person has concealed the particulars of his income; or (b) has furnished inaccurate particulars of such income. The expressions 'has concealed' and 'has furnished inaccurate particulars' have not been defined either in the section or elsewhere in the Act. However, notwithstanding differences in the two circumstances, they lead to the same effect, viz., keeping off a certain portion of income. The former is direct while the latter may be indirect in its execution.

A conspectus of the Explanation added by the Finance Act, 1964, and the subsequent substituted Explanations makes it clear that the statute visualized the assessment proceedings and penalty proceedings to be wholly distinct and independent of each other. In essence, the Explanation (both after 1964 and 1976) is a rule of evidence. Presumptions which are rebuttable in nature are available to be drawn. The initial burden of discharging the onus of rebuttal is on the assessee. Explanation 1 automatically comes into operation when, in respect of any facts material to the computation of total income of any person, there is failure to offer an explanation or an explanation is offered which is found to be false by the Assessing Officer or the first appellate authority, or an explanation is offered which is not substantiated. In such a case, the amount added or disallowed in computing the total income is deemed to represent the income in respect of which particulars have been concealed. As per the provision of Explanation 1, the onus to establish that the explanation offered was bona fide and all facts relating to the same and material to the computation of his income have been disclosed by him will be on the person charged with concealment. The Assessing Officer is not obliged to intimate the assessee that Explanation 1 to section 271(1)(c) is proposed to be applied. The scheme of the provisions does not provide for such a

requirement either directly or inferentially. In Sir Shadilal's case [1987] 168 ITR 705, what the Supreme Court observed was that there may be several reasons for which the assessee may have offered an amount for addition, but that itself is not sufficient to infer concealment. It has not laid down as a rule of general application that whenever such is the case, penalty cannot be imposed. On the contrary, in such cases also the assessee is required to discharge the burden placed by the Explanation appended to section 271(1)(c).

In case an explanation is offered, the Assessing Officer is to examine it and find out whether the assessee has been able to establish that there was no concealment.

Held, that, in the case at hand, no explanation worth the name was offered by the assessee. The statement made by the assessee was to the effect that hand loans were obtained which were intended to be refunded immediately and, therefore, the entries were not made, but, later on, the arrangement did not work out. Therefore, the amount was offered for taxation. There was a clear admission that the entries were not made on the relevant dates. It was not a case where entries were made on the relevant dates and the source of money was omitted. The entries on the contrary were made on dates when there was sufficient cash balance. The intention to hide the actual state of affairs was clear. The explanation offered was fanciful and vague. The imposition of penalty was valid and the Tribunal erred in cancelling it."

17. The Hon'ble Supreme Court in the case of K.P.Madhusudanan (supra) while affirming the aforesaid view held that

"We find it difficult to accept as correct the two judgments aforementioned. The Explanation to section 271(1)(c) is a part of section 271. When the Income-tax Officer or the Appellate Assistant Commissioner issues to an assessee a notice under section 271, he makes the assessee aware that the provisions thereof are to be used against him. These provisions include the Explanation. By reason of the Explanation, where the total income returned by the assessee is less than 80 per cent. of the total income assessed under section 143 or

144 or 147, reduced to the extent therein provided, the assessee is deemed to have concealed the particulars of his income or furnished inaccurate particulars thereof, unless he proves that the failure to return the correct income did not arise from any fraud or neglect on his part. The assessee is, therefore, by virtue of the notice under section 271 put to notice that if he does not prove, in the circumstances stated in the Explanation, that his failure to return his correct income was not due to fraud or neglect, he shall be deemed to have concealed the particulars of his income or furnished inaccurate particulars thereof and, consequently, be liable to the penalty provided by that section. No express invocation of the Explanation to section 271 in the notice under section 271 is, in our view, necessary before the provisions of the Explanation therein are applied. The High Court at Bombay was, therefore, in error in the view that it took and the Division Bench in the impugned judgment was right."

18. According to me this case is squarely covered by the decisions of the Hon'ble Jurisdictional High Court in the cases of Zoom Communication (P.) Ltd. 327 ITR 510, Escorts Finance Ltd. 328 ITR 44 and Mohd Raza [2016-TIOL-2026-HC-DEL-IT], where the Hon'ble Delhi High Court held that it is open to the AO to levy penalty in a case, where only upon the assessment being picked up in scrutiny for further enquiry, the assessee has come out with the details and has surrendered the income for taxation. The Hon'ble Supreme Court in the case of B. A. Balasubramaniam & Bros. Co 236 ITR 977 held that the difference between income assessed and income returned being more than 20 per cent, Explanation to section 271(1)(c) became applicable and assessee having failed to discharge onus being cast on assessee by virtue of said Explanation, Assessing Officer was justified in imposing penalty. The Hon'ble Kerala High Court in the cases of Gates

Foam & Rubber Co 91 ITR 467 and India Seafood 105 ITR 708 held that claiming excessive deduction also amounts to concealment of income. Similarly the Hon'ble Madhya Pradesh High Court in the case of Steel Ingots Ltd. 296 ITR 228 held that in case of concealment of true income chargeable to tax by making bogus claim, levy of penalty u/s 271(1)(c) read with Explanation 1 is justified.

19. I find that while imposing penalty under section 271(1)(c) of the Act, the AO did not categorically mention the Explanation 1 to section 271(1)(c) of the Act though he mentioned that the explanation offered by the assessee was not found acceptable. Thus, the AO has indirectly invoked the Explanation 1 to section 271(1)(c) of the Act. The Hon'ble Punjab & Haryana High Court in the case of Rajeshwar Singh 162 ITR 173, have held that Explanation 1 to section 271(1)(c) of the Act can be invoked for the first time by the ITAT. By following the aforesaid judgment of the Hon'ble Punjab & Haryana High Court in the case of Rajeshwar Singh the ITAT, Chandigarh Bench in the case of Roshan Lal Madan 245 ITR 36 (AT)(Chd.), has taken the same view that Explanation 1 to section 271(1)(c) of the Act can be invoked for the first time by the Tribunal. Thus, it is held that the Explanation 1 to section 271(1)(c) of the Act is clearly attracted here.

20. A very heavy onus was placed on the respondent/assessee to explain the difference between the assessed income and returned income and the

respondent/assessee, in the case in hand, did not discharge the said onus corroborated by documentary evidence. Since the assessee failed to establish the bonafide of his claim under section 54F of the Act, therefore, in terms of explanation 1 to section 271(1)(c) of the Act, the onus is not properly discharged by the respondent/assessee. In the light of the discussion made above, it is thus clear that all the material facts and particulars relating to the assessee's computation of income were not disclosed by the assessee unless he was cornered. Even otherwise the breach of civil obligation which attracts a penalty under the provisions of the Act would immediately attract the levy of penalty irrespective of the fact that whether the contravention was made by the defaulter with any guilty intention or not [Dharmendra Textile Processors and others, in civil appeal nos.10289 -10303 of 2003].In this view of the matter and in the light of decisions of the Hon'ble Supreme Court and jurisdictional High Court referred to above, I am of the opinion that the respondent/assessee has not been able to discharge the burden that lay upon them by Explanation 1 to section 271(1)(c) of the Act. Therefore, I have no hesitation in reversing the impugned order of the CIT(A) and upholding the penalty imposed by the AO under section 271(1)(c) of the Act particularly when the Ld. CIT(A)'s order is not well reasoned and devoid of any merit. Consequently, the appeal of the Revenue is allowed.

PER: MAHAVIR SINGH, VICE PRESIDENT AS THIRD MEMBER:

This Appeal is referred by the President, Income tax Appellate Tribunal vide Order dated 04.09.2024 which was intimated vide Head Office U.O. No. F.28-Cent.Jd(AT)/2024, dated 05.09.2024, to decide following dissenting questions U/S 255(4) of the Income Tax Act, 1961(hereinafter 'the Act').

2. The Ld. Accountant Member framed the following question of dissent:-

(1) "Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was justified in deleting the penalty u/s. 271(1)(c) of the Income Tax Act."

2.1 The Ld. Judicial Member framed following separate set of questions:-

- (i) Whether the Tribunal can travel beyond the facts recorded in the assessment order or the order of penalty u/s. 271(1)(c) of the Act or the order of CIT(A) for adjudicating the appeal?
- (ii) Whether the Tribunal can bring new facts on record gathered from external sources / public domain, whereas such facts do not form part of the orders passed by lower authorities or records for imposition of penalty u/s. 271(1)(c) of the Act?
- (iii) Whether in facts of the case, penalty levied u/s. 271(1)(c) of the Act is liable to be sustained where the assessee's claim of deduction u/s. 54F of the Act was merely rejected by the AO on the grounds of non-compliance of provisions of section 54F of the Act?

- (iv) Whether expression 'furnished inaccurate particulars of such income' including wrong claim resulting from non compliance of the pre requisite conditions of section 54F of the Act?
- (v) Whether the Tribunal can change the limb of penalty to "concealment of income", when the AO has invoked the limb of "furnishing inaccurate particulars of income" at the time of recording satisfaction for levy of penalty u/s. 271(1)(c) of the Act?

3. Brief facts of the case are that the assessee during financial year 2015–16 relevant to assessment year 2016-17 sold 5,99,990 number of shares of DixonAppliances Private Limited for a total consideration of ₹10,00,00,000/-, resulting in long-term capital gain of ₹9,01,50,051/-. The AO noted that the assessee claimed to have invested a sum of ₹7,00,00,000/- towards purchase of plot located at Plot No. 25, Property No. 226, (old), 222/200 (New), New Rajpur Road, Pargana Central Doon, Dehradun, Uttarakhand (herein after 'the property') vide agreement dated 27.07.2016. The total sale consideration vide this agreement to sell was ₹7.25 crore as against the advance payment of ₹7,00,00,000/- on 27.07.2016 and the remaining consideration to be paid at the time of registration of sale deed. The assessee claimed that the sale proceeds out of sale of shares were utilized for purchase of the property vide agreement dated 27.07.2016 and thereafter on 29.07.2016 an amended agreement was signed between the assessee and Trophy Estates Private Limited for construction of residential building on the property. The assessee claimed exemption u/s 54F of the Act, but the AO rejected assessee's claim as the new asset has never come into existence within the time specified under section 54F of the Act. The assessee vide letter dated 13.12.2018, during the course of scrutiny assessment,

surrendered the claim of deduction and agreed for the addition. The AO initiated penalty proceeding under section 271(1)(c) for furnishing of inaccurate particulars of income. Accordingly, the AOvide order dated 26.06.2019 levied the penalty under section 271(1)(c) of the Act for a sum of Rs. 1,45,59,592/-. The assessee in appeal carried the matter, of levy of penalty, before the CIT(A) and the CIT(A) deleted the penalty by stating that the construction of building was delayed by the contractor which was beyond the control of the assessee and the same was not a deliberate delay. The CIT(A) further noted that the assessee has not contested the addition as agreed by him and also paid the due taxes and interest on such additional income. Accordingly, he was of the view that there was a reasonable cause as the assessee could not complete the construction of the house and therefore, CIT(A) deleted the penalty in dispute. Aggrieved, Revenue came in appeal before the Tribunal.

4. Originally, the Revenue has raised 02 grounds along with Appeal Memo filed in Form No. 36 on 15.09.2023, but subsequently, during the course of hearing, the Revenue revised its ground on 09.04.2024 and raised the following ground of appeal, which read as under:-

“Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in deleting the penalty of Rs. 1,45,59,592/- u/s. 271(1)(c) on account of furnishing inaccurate particulars of income with respect to the deduction claimed under section 54F of the Act.”

5. The Ld. Judicial Member relying upon the decision of Hon’ble Supreme Court in the case of CIT vs. Reliance Petroproducts P. Ltd. (2010) 322 ITR 158 (SC) and also noting the fact that the assessee has furnished all the details in the return of income, including long-term capital gain on sale of shares and holding

that it is not a case where the details furnished by the assessee were found to be incorrect in regard to long-term capital gain earned during the year and the same was utilised towards purchase of the property and confirmed the order of the CIT(A) in deleting the penalty. However, Ld. Accountant Member allowed the appeal of the Revenue by reversing the order of the CIT(A) and consequently the penalty was confirmed.

6. Now upon reference, the matter was heard.

7. The above noted facts as narrated in paras 2 to 5 of this order are undisputed. Admittedly, assessee sold shares of Dixon Appliances Private Limited for a total consideration of ₹10,00,00,000/- resulting in long-term capital gain of Rs. 9,01,50,051/- and claimed that the sale proceeds of these shares were utilized towards purchase of the property vide agreement dated 27.07.2016 and thereafter vide amended agreement dated 29.07.2016 between the assessee and Trophy Estates Private Ltd., a construction of residential property was agreed to. The assessee advanced a sum of ₹7,00,00,000 for purchase of the above said property on 27.07.2016. The assessee has enclosed copy of agreements dated 27.07.2016 as well as 29.07.2016, which were already before the AO during the original assessment proceedings and before the CIT(A) during appellate proceedings. Admittedly, the Assessee furnished all requisite details vide submissions dated 02.11.2018 and 13.12.2018 before the AO during the scrutiny assessment proceedings and AO was also apprised that the registration of sale deed could not be materialized till date owing to the delay in construction of the building, which is attributable to the builder. However, to abstain from the protracted litigation and the issue being debatable, the assessee decided to

withdraw its claim of exemption u/s. 54F of the Act and paid due taxes alongwith interest thereon. The questions referred by the learned Judicial Member from serial No. (iii) to (v) as mentioned above and question referred by the Ld. Accountant Member are relating to issue of levy of penalty u/s. 271(1)(c) for non-compliance of provisions of Section 54F of the Act. These questions are being answered as under:

7.1 Admittedly the assessee's case was selected for scrutiny assessment by issuing notice u/s. 143(2) of the Act dated 06.07.2017 and thereafter notice under section 142(1) of the Act alongwith questionnaire was issued requiring the assessee to furnish explanation in relation to exemption claimed u/s. 54F of the Act alongwith evidences. In response to these notices, the assessee vide submissions dated 02.11.2018 and 13.12.2018 furnished the agreement dated 27.07.2016 by virtue of which sale proceeds were utilized towards purchase of the property and also a construction agreement dated 29.7.2016 signed between the assessee and Trophy Estates Private Limited, envisaging construction of residential property on the property were submitted. The assessee also apprised the AO that registration of sale deed and completion of construction building could not happen till date owing to the delay in construction attributable to the builder. However, to avoid all protracted litigation and the issue being debatable, the assessee decided to withdraw his claim of deduction under section 54 of the Act and paid the due tax along with interest.

7.2 Now before me, the Ld. Counsel for the assessee argued that the claim of assessee only became bad and impermissible on 19.07.2018 because the builder could not complete the construction of building and consequently the sale deed

could not be materialized. It was the claim that any income had to be offered, would ideally have been offered in the return of income for financial year 2018-19 relating to assessment year 2019-20 and not for the relevant assessment year 2016-17 as has been done in the present case. He argued that at this juncture, what would be relevant to highlight and would also add credence to the bonafides of the assessee is that the assessee filed complete details before the AO and also surrendered the amount at the first instance. Although, the assessee could have declared this long term capital gain in financial year 2018-19 relevant to assessment year 2019-20. The only reason why this point is highlighted, argued by the Ld. Counsel for the assessee, is to evidence the bona fides of the assessee since if such income was offered to tax in assessment year 2019-20, the interest element would be minimal. The bonafide of the assessee can be examined from the point of view that after surrendering the amount, the assessee paid due taxes and interest and decided not to pursue the litigation, any further. He further argued that the penalty proceedings initiated against the assessee which culminated in the levy of penalty u/s. 271(1)(c) of the Act vide order dated 26.06.2019 on the premise that the assessee has furnished inaccurate particulars of income. Ld. Counsel for the assessee argued that the assessee's case is fully covered by the decision of the Hon'ble Supreme Court in the case of Reliance Petroproducts P. Ltd. (Supra) wherein it is categorically held that the merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, attracts the penalty u/s. 271(1)(c) of the Act. Hon'ble Supreme Court further noted that if the contention of the Revenue is accepted then in case of every return where the claim made is not accepted by the AO for any reason, the

assessee will invite penalty under section 271(1)(c) of the Act. That is not the intendment of the Legislature. Accordingly, Ld. Counsel for the assessee argued that there was a legal principle as propounded by the Apex Court, the claim needs to be seen from the return of income and where such claim was correct at such point of time. Ld. Counsel also relied upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. Neenu Dutta [2013] 357 ITR 525; New Holland Tractors (India) Pvt. Ltd. vs. CIT [2015] 275 CTR 291; and Pawan Garg vs. ACIT [2022] 94 ITR (T) 159 (ITAT, Chandigarh Tribunal).

7.3 On the other hand, Ld. SR. DR submitted that the assessee sold shares of Dixon Appliances P Ltd. against which the deduction 54F of the Act was claimed by the assessee on 20.07.2015, hence, the assessee must have purchased a residential house on or before 19.07.2018. It was submitted that assessee filed his return of income for the relevant assessment year on 29.07.2016 i.e. almost a year after the share sale transaction on which LTCG was earned by the assessee. No evidence has been brought on record before the lower authorities that the assessee and the contract put in any sincere efforts to complete the construction of house before filing the ITR by the assessee. Further it is submitted that notice u/s. 143(2) of the Act informing the assessee of the fact that his case for the relevant assessment year has been selected for scrutiny by the Department, was issued to the assessee on 06.07.2017 i.e. almost 2 years after the share sale transaction, and the status of the residential house was still not complete and no evidence has been brought on record before the lower authorities in this regard and no efforts have been made by assessee and contractor to complete the building before the due date for claiming deduction u/s. 54F of the Act. It was the further contention of the revenue that during the assessment proceedings, vide

notice dated 23.10.2018 the assessee was asked to justify the claim of deduction u/s. 54F of the Act alongwith evidence, but assessee in response thereof submitted an agreement to sell with Trophy Estates P Ltd. wherein the assessee had purchased the property. On the said notice dated 23.10.2018, more than 3 years had already lapsed for the purchase / construction of the said residential house, assessee is ineligible to claim deduction u/s. 54F of the Act as on 23.10.2018 and still chose not to disclose this fact that he is ineligible to claim deduction u/s. 54F of the Act as on 23.10.2018 and instead submitted an agreement to sell before the AO, that too of a plot of land. It was further submitted that vide order sheet entry dated 28.11.2018, when the assessee was again asked by the AO to show cause as to why his claim of deduction u/s. 54F of the Act should not be disallowed on account of his failure to purchase/ construct a new residential within 3 years, assessee vide letter dated 13.12.1018 against chose not to disclose the fact of his ineligibility for the claim of deduction before the AO and instaed furnished a copy of an agreement by which the assessee entered into a contract for purchase/ construction of new residential house on the same property. When the assessee was confronted by the AO then only vide letter dated 13.12.2018 assessee surrendered his claim of deduction u/s. 54F of the Act, which only shows that assessee wishes to escape the panel provisions. It was further submitted that assessee has not submitted his balance sheet/ statement of affairs before the lower authorities in order to prove that he did not own more than one residential house, other than the new residential house, on the date of transfer of original asset. Besides above, the Ld. Sr. DR relied upon the order of the Ld. Accountant Member, dissenting the draft order and submitted that order of the CIT(A) is bad in law and needs to be reviewed and correct to

ensure a fair and accurate determination of the assessee's liability under the Income Tax Act, 1961.

8. I noted that the assessee during the course of scrutiny assessment proceedings for the relevant Assessment year 2016-17 vide letter dated 2.11.2018 filed following evidences for claim of deduction u/s. 54F of the Act:-

- a) Copy of agreement dated 27.07.2016 & 29.07.2016 with Trophy Estates Pvt. Ltd.
- b) Copy of relevant extract of bank statements in evidence of payment of Rs. 6,93,00,000/- (net off TDS @1% u/s. 194I) to Trophy Estates Pvt Ltd.
- c) Copy of TDS certificate for Rs. 7,00,000/- issued to Trophy Estates Pvt, Ltd..

8.1 From the above details filed by the assessee vide letter dated 02.11.2018 before the AO during the course of assessment proceedings, it is clear that the assessee has filed evidences for claim of deduction u/s. 54F of the Act and furnished the explanation in relation to exemption claimed u/s. 54F of the Act. The assessee vide his letter dated 13.12.2018 furnished all the requisite details and also apprised the AO that the registration of sale deed and non-construction of building could not happen due to the reasons attributable to the builder. Accordingly, the issue being debatable, the assessee surrendered the claim of exemption u/s. 54F of the Act and paid the due taxes alongwith interest. These facts clearly established the bonafide of the assessee in the factum that the assessee has claimed exemption u/s. 54F of the Act under bonafide belief. That the

assessee had purchased the property and also entered into an agreement with the builder for construction of house thereon.

8.2 In the case of case of UOI vs. Dharmendra Textile Processors [2007] 295 ITR 244 (SC) the matter was referred to a Larger Bench by observing that there is a conflict of opinion between the judgements of Division Bench of Hon'ble Supreme Court in the case of Dilip N. Shroff vs JCIT [2007] 161 Taxman 218 (SC) on the one hand, and on the other hand, SEBI Chairman vs. Shriram Mutual Fund [2006] 4 SCC 361, the Hon'ble Supreme Court observed that object behind the enactment of section 271(1)(c) read with explanation indicates that the said section has been enacted to provide for a remedy of loss of revenue and the penalty is a civil liability. Further, it is observed by the Hon'ble Supreme Court that willfull concealment is not an essential ingredient for attracting the civil liability as is the case in the matter of prosecution under section 276C. However, Hon'ble Supreme Court very categorically held that while considering the appeal against the order made under section 271(1)(c) what is required to be examined is the record which the officer imposing the penalty had before him and if that record can sustain the finding there had been concealment, that would be sufficient to sustain the penalty. It means that each case is to be seen from the independent fact of that case. In the present case, facts clearly reveal that from the penalty order and the assessment order that the assessee has filed explanation before the AO that the assessee has purchased the property and entered into an agreement with the builder for construction of house on the same plot of land and on the basis of such agreements, the assessee had claimed the benefit of deduction u/s. 54F of the Act. Simplicitor the AO levied the penalty only on one premise that the assessee is unable to construct the house within the

statutory time period which is a pre-requisites for claiming the deduction u/s. 54F of the Act. The relevant findings of the AO in penalty order reads as under:-

“From the above it is clear that the section clearly states that the assessee invests the net sale consideration of the capital asset to construct a residential house within a period of three years of the sale of asset or purchases an already built house within one year before or two years after the sale of original asset. Hence, the section cast the onus on the assessee to prove that the assessee has purchased or constructed the house within the prescribed period. But the assessee could not able to construct the residential house within the statutory time period which is a prerequisites condition as prescribed by the section 54F of the Act. Also upon confirming the assessee himself surrendered the amount of deduction claimed under section 54F of the Act, subject to no penalty. But the offer of surrender subject to no penalty was not accepted as the assessee has not complied with the provision of section 54F of the Income Tax Act. Moreover, the case laws relied upon by the assessee in his reply are not applicable to the facts and circumstances of the case.

The facts and circumstances of the case have been considered in the assessment order passed u/s. 143(3) of the I.T. Act dated 19.12.2018 wherein it has evidently been established that the assessee has furnished inaccurate particulars of income.”

8.3 In regard to another judgements of Hon’ble Delhi High Court in the case of CIT vs. Zoom Communication P Ltd. [2010] 327 ITR 510 (Delhi) and in the case of CIT vs. Escorts Finance Ltd. [2010] 328 ITR 44 (Delhi) the Hon’ble Delhi High Court is categorical while confirming the penalty that if the assessee makes a claim which is not only incorrect in law, but also without any basis and explanation furnished by him for making such a claim and such claim is found not bonafide. I noted that

facts in the present case before me are clearly distinguishable for the reasons that the assessee has furnished complete explanation alongwith evidences for purchasing of the property and thereafter entering into an agreement for construction of house with the builder, but the builder could not complete the construction of house or could not start the construction on time. But admittedly, the explanation of the assessee is nowhere held to be false or without any basis by the AO in the penalty order. Whereas I consider the explanation offered is a bonafide one. Once the explanation offered is a bonafide explanation, it does not attract the penalty u/s. 271(1)(c) of the Act for furnishing of inaccurate particulars of income.

8.4 Similarly, the decision of the Hon'ble Gujarat High Court in the case of A M Shah & Co. 238 ITR 415 also speaks about furnishing of information and explanation, which is bonafide. In the present case before me, the assessee during assessment proceedings filed the complete details as noted above including the purchase of the property and entering into an agreement for construction of house with the builder.

8.5 Admittedly, it is established that whenever there is a difference between the returned income and assessed income, there is an inference of concealment and Explanation 1 to Section 271(1)(c) of the Act raises a presumption which is always rebuttal. There is no quarrel about the cases of B.A. Balasubramaniam & Bros. Co. 157 CTR 556 (SC); B.A. Balasubramaniam & Bros. 152 ITR 529 (Mad.); Mussadilal Ram Bharose 165 ITR 14 (SC); K.R. Sadayappan 185 ITR 49 (SC); Jeevan Lal Sah 205 ITR 244 (SC) and K.P. Madhusudanan 251 ITR 99 (SC). In these case laws, admittedly the onus is on the assessee to rebut the inference of

concealment and absence of plausible explanation itself would attract penalty u/s. 271(1)(c) of the Act for concealment of income or furnishing of inaccurate particulars of income as the case may be. But in the present case, the assessee offered the explanation corroborating with the evidences justifying the claim of deduction u/s 54F of the Act. But there is no reason that the assessee is not at all entitled to claim of deduction and ultimately the same was surrendered by the assessee during the assessment proceedings. The reasons was that ultimately construction of building could not take place due to inability of the builder and/or default on the part of the builder.

8.6 In regard to the decision of the Hon'ble Supreme Court in the case of MAK Data P. Ltd. V CIT, (2013) 358 ITR 593 (SC) as per Explanation 1 to Section 271(1)(c) of the Act, admittedly the disclosure of concealed income does not absolve assessee of rigours of section 271(1)(c) of the Act if the assessee fails to offer any explanation which is bonafide. Similar is the situation with the decision of the Hon'ble Supreme Court in the case of K.P.Madhusudanan vs CIT (2001) 251 ITR 99 (SC).

8.7 In the present case before us, the assessee has explanation which is supported by the documentary evidences as the assessee has furnished all the relevant details alongwith return of income or during the course of scrutiny assessment proceedings and this disclosure of information in regard to claim of deduction u/s. 54F of the Act in respect of the long term capital gain earned during the year is sufficient for not confirming the levy of penalty u/s. 271(1)(c) of the Act.

8.8 The facts of the present case clearly indicates that the issue in dispute is squarely covered by the decision of the Hon'ble Supreme Court in the case of Reliance Petroproducts P. Ltd. (Supra), which has been relied by the Ld. Judicial Member in his order.

8.9 Coming to Question No. (i) & (ii) referred by the Ld. Judicial Member, as aforesaid that (i) whether the Tribunal can travel beyond the facts recorded in the assessment order or the order of penalty u/s. 271(1)(c) of the Act or the order of CIT(A) for adjudicating the appeal?; (ii) Whether the Tribunal can bring new facts on record gathered from external sources / public domain, whereas such facts do not form part of the orders passed by lower authorities for imposition of penalty u/s. 271(1)(c) of the Act?

8.10 I noted from the order of the Ld. Accountant Member that he has relied on the details available in public domain that Trophy Estates Pvt. Ltd. got map sanctioned of 62 flats, by the competent authority on part of the Property No. 226 (old) 222/200 (new), Rajpur Road, Dehradun and also got completion certificates of residential units during financial year 2017-18 onwards. The plot No. 25, property No. 226 (old) 222/200 (new) Rajpur Road, Dehradun did not figure in the list of map sanctioned and completion certificates issued by the competent authority since financial year 2017-18 onwards, which belong to the assessee. Ld. Accountant Member relied on these documents by observing in para no. 2c of his order. Ld. Counsel for the assessee on this made his arguments that the facts noted by the Ld. Accountant Member is self evident, which proves that the money has been forwarded for construction of residential house and not for the purchase of residential house. He further argued that Ld.

Accountant Member is acknowledging the fact that the residential houses were intended to be constructed on the land for which sums were forwarded, but unfortunately the assessee's house could not be constructed in time because these were constructed in subsequent financial year 2017-18. The observation of Ld. Accountant Member only strengthens the case of the assessee that Trophy Estates Pvt. Ltd. did intend to construct the residential premises on the land for which it got sanctioned in subsequent years i.e. financial year 2017-18. He argued that the year in question is financial year 2015-16 and hence, the fact that construction did commence in the subsequent year only strengthens the case of the assessee. Further, Ld. Counsel argued that reliance placed by Ld. Accountant Member on Google Search Engine without confronting the assesseeis against the settled position of law. I noted that this issue is settled by the Hon'ble Supreme Court of India in the case of Kishan Chand Chella Ram vs. CIT (1980) 125 ITR 713 (SC) wherein, it has been held that cross examination is must where AO relies upon only on the statement of Third Party unconnected with the assessee. Hon'ble Supreme Court held that the letters dated 18.2.1955 and 09.03.1959 did not constitute any material evidence which the Tribunal could legitimately taken into account for the purpose of arriving at the finding that the amount of Rs. 1,07,350/- was remitted by the assessee from its Madras Office. Accordingly, Hon'ble Supreme Court eliminated these two letters from consideration and held that there was no material evidence at all before the Tribunal which could support its finding. It was further held that what the Manager wrote in his letters could not possibly be based on his personal knowledge but was based on hear say. Even otherwise, if revenue authorities ought to have called upon the Manager to produce the documents and papers of which he made a statement

and confronted the assessee with these documents and papers. In the present case, I am of the view that information gathered from the Google Search Engine cannot be the basis for arriving at a decision. If at all information from the public domain is to be collected then that has to be confronted to the assessee, which the Tribunal failed to do in this case. Hence, according to me, the Tribunal cannot travel beyond the facts recorded in the orders of the authorities below or on the record of the AO. Further, I am of the view that the Tribunal cannot bring new facts on record specially gathered from external sources/ public domain which do not form part of the orders passed by the lower authorities without confronting the same to the assessee. In terms of the aforesaid discussions, now I am answering the Questions framed by the Ld. Accountant Member as well as by the Ld. Judicial Member as under:-

Question framed by the Ld. Accountant Member	Answer to the Question framed by the Ld. Accountant Member
Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was justified in deleting the penalty u/s. 271(1)(c) of the Income Tax Act.	Yes. In view of the aforesaid facts and circumstances of the case and in the background of the aforesaid discussions, the Ld. CIT(A) was justified in deleting the penalty in dispute.
Question framed by the Ld. Judicial Member	Answer to the Question framed by the Ld. Judicial Member
(i) Whether the Tribunal can travel beyond the facts recorded in the assessment order or the order of	No. In view of the aforesaid facts and circumstances of the case and in the background of the aforesaid

penalty u/s. 271(1)(c) of the Act or the order of CIT(A) for adjudicating the appeal?	discussions, the Tribunal cannot travel beyond the facts recorded in the orders of the authorities below.
(ii) Whether the Tribunal can bring new facts on record gathered from external sources / public domain, whereas such facts do not form part of the orders passed by lower authorities or records for imposition of penalty u/s. 271(1)(c) of the Act?	No. In view of the aforesaid facts and circumstances of the case and in the background of the aforesaid discussions, the Tribunal cannot bring new facts on record gathered from external sources / public domain, without confronting to the assessee.
(iii) Whether in facts of the case, penalty levied u/s. 271(1)(c) of the Act is liable to be sustained where the assessee's claim of deduction u/s. 54F of the Act was merely rejected by the AO on the grounds of non-compliance of provisions of section 54F of the Act?	No. In view of the aforesaid facts and circumstances of the case and in the background of the aforesaid discussions, the penalty in dispute cannot be sustained.
(iv) Whether expression 'furnished inaccurate particulars of such income' including wrong claim resulting from non compliance of the pre requisite conditions of section 54F of the Act?	No. In view of the aforesaid facts and circumstances of the case and in the background of the aforesaid discussions, the wrong claim of deduction u/s. 54F cannot be included in 'furnishing inaccurate particulars of such income'.
(v) Whether the Tribunal can change the limb of penalty to "concealment of income", when the AO has invoked the limb of "furnishing inaccurate particulars of income" at	In view of the aforesaid facts and circumstances of the case and in the background of the aforesaid discussions, this question does

the time of recording satisfaction for levy of penalty u/s. 271(1)(c) of the Act?	not arise, hence, not required to be answered.
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9. In view of above, I agree with the order of Ld. Judicial Member. I do not agree with the order of Ld. Accountant Member on the given facts and circumstances of the case.

10. In the light of the above discussions, the matter may now be placed before the regular bench for an appropriate order, in accordance with law.

PER VIKAS AWASTHY, JM:

The appeal was filed by the Revenue assailing the order of Commissioner of Income Tax (Appeals), New Delhi [hereinafter referred to as 'the CIT(A)] dated 25.05.2026 for AY 2016-17 deleting penalty of Rs.1,45,59,592/- u/s. 271(1)(c) of the Income Tax Act,1961(hereinafter referred to as 'the Act').

After hearing the appeal, the Judicial Member upheld the order of CIT(A) and dismissed the appeal of Revenue. The Accountant Member opined otherwise and wrote a separate order confirming penalty and allowing the appeal of Revenue. On account of difference of opinion between the Members constituting the Bench, a reference was made to the Hon'ble President ITAT u/s. 255(4) of the

Act. The Hon'ble President vide order dated 04.09.2024 nominated Third Member to decide the reference. The Id. Third Member vide order dated 13.06.2025 concurred with the view of Judicial Member. Consequent to the opinion of Third Member, appeal of the Revenue stands dismissed.

Order pronounced in the open court on Monday the 23rd day of June, 2025.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली / Delhi, दिनांक/Dated 23/06/2025

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt.Registrar)ITAT, DELHI