IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT, AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No. 716/Del/2014
Assessment Year: 2008-09

The D.C.I.T. Circle - 1 Faridabad	Vs.	Shri Parminder Chadha 10, Mathura Road Jangpura, New Delhi PAN : AADPC 7936 Q Q
[Appellant]		[Respondent]

Date of Hearing : 31.05.2016
Date of Pronouncement : 31.05.2016

Appellant by : Shri R.S. Negi, Sr. DR
Respondent by : Shri Sanjeev Puri, CA

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal filed by the Revenue is directed against the order of the CIT(A), Gurgaon dated 13/12/2013 for A.Y 2008-09.

2. The solitary issue raised in this appeal by the Revenue reads as under:

> *"Whether on the facts and in the circumstances of the case the ld. CIT(A) was right in deleting the penalty imposed by the AO u/s 271(1)(c) of the Act on account of not declaring the correct Long Term Capital on sale of immovable properties".*

3. Briefly stated, the facts giving rise to this appeal are that search and seizure operations were conducted on 16.1.2008 at the residential premises of Smt. Parminder Chadha, the present assessee, during which, total cash amounting to Rs. 1,02,100/- and jewellery valued at Rs. 13,40,576/- was found and seized. In response to notice issued u/s 142(1) dated 18.11.2008, the assessee filed return of income declaring an income of Rs. 1,36,29,393/- on 16.2.2009 along with copy of original return filed on 30.7.2008. Considering the facts of the case, sequence of events and documentary evidence, the AO calculated long term capital gain at Rs. 5,63,26,666/- in place of 1,46,60,000/- shown by the assessee. The difference of Rs. 4,16,66,666/- [Rs. 5,63,26,666/- minus Rs. 1,46,60,000/-] was added by the AO as undisclosed income during the year under consideration. The AO also invoked the provisions of section 271(1)(c) of the Act for concealing income/furnishing inaccurate particulars of income. Aggrieved, the assessee went in appeal before the ld. CIT(A) who deleted the penalty levied by the AO. Now the aggrieved Revenue is before the Tribunal against the penalty deleted by the ld. CIT(A).

4. Both the rival representatives reiterated their submissions as taken by them before the lower authorities. The ld. AR relied on the impugned order and submitted that the ld. CIT(A) was

quite justified in deleting the penalty imposed by the AO. The ld. AR placed his reliance on the decision in the case of the assessee herself in ITA No. 993/Del/2013 for A.Y 2008-09 decided by ITAT Delhi 'H' Bench vide order dated 22.11.2013 wehrein similar penalty was deleted by the ITAT.

5. Per contra, the ld. DR relied on the assessment order and submitted that the ld. CIT(A) was not justified in deleting the penalty imposed by the AO. However, he could not controvert the fact that the ITAT Delhi order dated 22.11.2013 in assessee's own case is squarely covered in favour of the assessee.

6. We have heard the arguments of both the sides and carefully perused the relevant material placed on record before us. Before we consider the factual matrix of this case to ascertain as to whether in the eyes of the provisions of the Act as explained by numerous judicial pronouncements, penalty can be levied in this case or not, we would like to discuss in nut shell the relevant legal position regarding levy of penalty u/s 271(1)(c) of the Act and as to how and when such penalty can be levied under this section. There are no two opinions about the settled position of law that regular assessment proceedings and penalty proceedings are two entirely different subjects which operate in distinct and separate spheres so much so

that entirely different parameters are applicable for making quantum addition and for levying penalty under section 271(1)(c) of the Act. There can be no dispute with regard to the position of law that under section 271(1)(c) penalty can be levied only if either the act of "concealment of particulars of income" or "furnishing of inaccurate particulars of income" is found to have been committed by the assessee. These are two different omissions or defaults albeit they refer to deliberate act on the part of the assessee. A mere omission or negligence would not constitute a deliberate act of either suppressio veri or suggestio falsy. By the mere reason of such concealment or of furnishing of inaccurate particulars alone, the assessee does not, ipso facto, become liable to a penalty. Imposition of penalty is not at all automatic. Meaning thereby, any addition in quantum would not lead to automatic levy of penalty and this is also true in respect of furnishing of inaccurate particulars of income. Not only is the levy of penalty discretionary in nature but the discretion has to be exercised keeping the relevant factors in mind and the approach of the taxman must be fair and objective. This subject has been a matter of great controversy. Finally, after referring to the decisions in the case of Dilip N. Shroff vs JCIT & Another, 291 ITR 519, Union of India vs. Dharmendra Textile Processors [2008] 13 SCC 369, as well as Union of

India vs Rajasthan Spg. & Wvg. Mills [2009] 13 SCC 448, the Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts Pvt. Ltd, 322 ITR 158, has recently held as under:

> *"A glance at the provisions of section 271(1)(c) of the Income-tax Act, 1961, suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.*

Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or

false there is no question of inviting the penalty under section 271 (1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars."

7. Adverting to the facts of the case, we find that the assessee's claim was that it was under the bonafide belief that the income from sale of property was assessable as long term capital gains only. It was vehemently submitted by the ld. counsel for the assessee that there was no question of concealing of income or furnishing of inaccurate particulars of income. It was also argued that all the details relating to sale of property were disclosed. In the light of the above submissions, it was argued that there is no question of any concealment of income, etc. inviting attraction of provisions of section 271(1)(c) of the Act.

8. After considering the legal position on this subject, vis a vis the facts of this case, we find that penalty u/s 271(1)(c) of the Act can be levied where the Assessing Officer is satisfied that the assessee has concealed particulars of

income or has furnished inaccurate particulars of income. Explanation 1 to this section speaks about the deemed concealment of income in cases where any amount is added or any claim is disallowed in computing the total income of a person, if two situations are available from the impugned facts. First situation is where the assessee, in respect of any facts /material to the computation of total income fails to offer an explanation or offers an explanation which is found to be false. The second situation is where the assessee, in respect of facts or material to the computation of total income offers explanation which he is not able to substantiate and also fails to prove that such explanation is bonafide and all facts relating to computation of total income have been disclosed by him. This explanation lays down the Rule of Evidence and in case the assessee fails to offer any explanation or his explanation is found to be false or the explanation is not substantiated, the presumption that he has concealed particulars of income automatically comes into play. It is true that the assessee had disclosed the transactions regarding sale of property in the computation of income filed with the return of income. We further find that

the ld. CIT(A) has deleted the penalty in the case of the very assessee for A.Y 2008-09 by relying on the decision of the ITAT vide order dated 22.11.2013. In view of our above discussion, conclusion of the ld. CIT(A) and following our own order, we uphold the order of the first appellate authority and we decline to interfere with the same. We direct the AO to delete the penalty so made by him.

9. In the result, the appeal of the Revenue stands dismissed.

The order is pronounced in the open court on 31.05.2016.

Sd/-	**Sd/-**
(G.D. AGARWAL)	**(C.M. GARG)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Dated: 31st May, 2016.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi