

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA Nos. 5851 & 5852/DEL/2016

Assessment Years: 2007-08

JAGAT SINGH
C/O SH. LOKESH JAIN, CA
C-177, SECTOR-44,
NOIDA
(PAN: ATDPS8617D)
(APPELLANT)

vs. ITO, WARD 1(5),
NOIDA

(RESPONDENT)

Assessee by : SH. C.S. ANAND, ADV.

Department by : SH. RAKESH KUMAR, SR. DR.

ORDER

The Assessee has filed these two appeals against the separate impugned Orders both dated 15.9.2016 of Ld. CIT(A)-I, Noida pertaining to assessment year 2007-08.

2. The ground raised in the Assessee's appeal No. 5851/Del/16 (AY 2007-08) reads as under:-

1. That on the facts of the case and under the law, the impugned penalty order is bad.
2. That the Id CIT(A) had denied natural justice to the appellant.
3. That the Id CIT(A) had proceeded to dismiss the appeal , on the incorrect finding that the appellant had not contested

the addition made and thus the assessment order had become final. (the appeal against the assessment order was pending as on that date).

4. That on the facts of the case and under the law, the penalty order passed u/s 271(1)(c) is liable to be quashed / annulled, because the "charge" was not specific.

The Id. A.O. had initiated penalty proceedings vide notice dt. 27.03.2015 issued u/s 274 r.w.s. 271, by simply placing tick mark against the 'printed line' you have concealed the particulars of income or furnish inaccurate particulars of such Income .

5. That on the facts of the case and under the law, the Id CIT(A) had erred in confirming the penalty order passed by the Id A.O u/s 271(1)(c) without appreciating that though there was no reference of Explanation -1 of sec. 271 (1) (c) in the Show Cause Notice issued, yet the Id A.O. had levied penalty u/s 27 1 (l)(c) by invoking Explanation- 1 of sec. 271 (l)(c).

6. That on the facts of the case and under the law, the Id CIT(A) had erred in confirming the penalty order passed by the Id A.O. u/s 271 (l)(c), without appreciating that the penalty u/s 271(1)(c) is not leviable / sustainable because it was a case of application of deeming provision - sec. 50C.

Note:- The appellant craves leave to amend / modify any of these grounds of appeal and/ or to raise additional ground(s) of appeal.

3. The ground raised in the Assessee's appeal No. 5852/Del/16 (AY 2007-08) reads as under:-

1. That on the facts of the case and under the law, the impugned penalty order is bad.
2. That the Ld. CIT(A) has denied natural justice to the appellant.
3. That on the facts of the case and under the law, the penalty order passed u/s. 271(1)(b) is liable to be quashed/ annulled, because the "charge" was not specific.

The Ld. AO had initiated penalty proceedings vide notice dated 27.3.2015 issued u/s. 274 r.w.s. 271, by simply placing tick mark against the printed line "you have without reasonable failed to comply with a notice u/s. 23(4)/ 23(2) of the Indian Income Tax Act, 1922 or u/s. 142(1)/143(2) of the I.T. Act, 1961 dated....."

4. That on the facts of the case and under the law, the penalty u/s. 271(1)(b) was not leviable.

5. That on the facts of the case and under the law, the penalty levied u/s. 271(1)(b) is liable to be deleted, because no specific date of non compliance was mentioned.
6. That on the facts of the case and under the law, the penalty levied u/s. 271(1)(b) is liable to be deleted, because the non compliance was unintentional, as the assessee's father (who used to look after the matters relating to income tax and follow up with the professional) was terminally ill due to cancer during such period and the ultimately died on 30.5.2015.

Note:- The appellant craves leave to amend / modify any of these grounds of appeal and/ or to raise additional ground(s) of appeal.

4. The brief facts of the case are that on the basis of AIR information the assessee had sold immovable property for Rs. 30,00,000/- on 30.3.2007 whereas the sale consideration as per section 50C was Rs. 37,96,000/- and the capital gains on transfer of capital asset chargeable to tax was having escaped assessment, the proceedings u/s. 147 of the I.T. Act, 1961 were initiated vide notice issued u/s. 148 of the I.T. Act, 1961 on 31.3.2014. No return of income was furnished in response to notice u/s. 148 of the Act. Further notice u/s. 142(1) were issued on 30.5.2014, 2.1.2015 and 25.3.2015 and also by affixture through the ITI of the Department. During

the year under consideration the assessee and other four persons had sold six immovable properties for a total sale consideration for Rs. 1,38,00,000/-, the total sale consideration for stamp purposes was Rs. 1,74,63,000/-. These 6 pieces of land were purchased by the assessee during the June-August, 2003 for Rs. 43,81,750/- including cost of stamp. AO observed that the land sold was capital asset within the meaning of section 2(14) of the I.T. Act, 1961 on which long term capital gains were chargeable to tax. But neither the assessee filed return of income in response to notice u/s. 148 nor furnished any details as required vide notices issued under section 142(1) and 144 of the I.T. Act, 1961. Accordingly, the AO worked out the taxable capital gain at Rs. 31,63,066/- in which the share of the assessee was determined at Rs. 6,32,613/- and by considering the income declared in return of income dated 27.3.2008 the total income of the assessee was determined at Rs. 7,14,783/-. The AO, thereafter, imposed penalty u/s 271(1)(c) of the Act by observing that as per Explanation-1 of Section 271(1) of the Act the assessee has failed to offer any explanation vide his order dated 29.9.2015. Aggrieved by order of the AO, the Assessee filed the appeal before the Ld. CIT(A), who vide his impugned order dated 15.9.2016 has upheld the action of the AO of imposing the penalty.

5. Now the Assessee is aggrieved against the impugned order and filed the present appeal before the Tribunal.

6. At the threshold, Ld. Counsel of the Assessee has stated that the issues involved in the present appeal are squarely covered by the ITAT, 'D' Bench, Mumbai decision dated 22.12.2010 passed in ITA no. 2210/Mum/2010 (AY 2006-07) in the case of Renu Hingorani vs. ACIT, Mumbai. In this behalf, he filed the copy of the said decision and requested that by following the same reasoning, the penalty in dispute may be deleted and accordingly, the appeal of the assessee may be allowed.

7. On the contrary, Ld. Sr. DR relied upon the orders of the authorities below.

8. I have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A) and the decision referred by the Ld. Counsel of the assessee in the case of Renu Hingorani vs. ACIT, Mumbai passed in ITA No. 2210/Mum/2010 (AY 2006-07) dated 22.12.2010. I find considerable cogency in the assessee's counsel in relying upon the aforesaid decision of the ITAT, New Delhi. For the sake of clarity, I am reproducing the finding given vide para no. 8 to 9 at pages 5 to 6 of the ITAT, Mumbai decision dated 22.12.2010 in the case of Renu Hingorani vs. ACIT, Mumbai passed in ITA No. 2210/Mum/2010 (AY 2006-07) as under:-

“8. We have considered the rival contentions and relevant record. We find that the AO had made addition of Rs. 9,00,824/- being difference between

the sale consideration as per sale agreement and the valuation made by the Stamp Valuation Authority. Thus, the addition has been made by the AO by applying the provisions of section 50C of the Act. It is evident from the assessment order that the AO has not questioned the actual consideration received by the assessee provisions of the Income Tax Act, 1961. The AO has not given any finding that the actual sale consideration is more than the sale consideration admitted and mentioned in the income or furnishing inaccurate particulars of income. It is also not the case of the revenue that the assessee has failed to furnish the relevant record as called by the AO to disclose the primary facts. The assessee has furnished all the relevant facts, documents/ material including the sale agreement and the AO has not doubted the genuineness and validity of the documents produced before him and the sale consideration received by the assessee. Under these facts and circumstances, it cannot be said that the assessee has not furnished correct particulars of income. Merely because the by the Stamp Valuation Authority would not be a conclusive assessee agreed for addition on the basis of

valuation made proof that the sale consideration as per this agreement was incorrect and wrong. Accordingly the addition because of the deeming provisions does not ipso facto attract the penalty u/s 271(1)(c). Hence in view of the decision of the Hon'ble Supreme Court in the case of CIT Vis Reliance Petroproducts Pvt.Ltd (supra), the penalty levied u/s 271(1)(c) is not sustainable. The same is deleted.

9. The appeal of the assessee is allowed.”

9. After perusing the aforesaid decision of the ITAT, Mumbai, I am of the considered view that the issues in dispute are squarely covered by the aforesaid decision, because the facts and circumstances of the present case are exactly similar and identical to that of case of Renu Hingorani vs. ACIT Mumbai (Supra). Therefore, respectfully following the aforesaid decision dated 22.12.2010 of the ITAT, 'D' Bench, Mumbai passed in ITA no. 2210/Mum/2010 (AY 2006-07) in the case of Renu Hingorani vs. ACIT, Mumbai, the penalty in dispute is deleted and accordingly, the appeal of the assessee is allowed.

10. With regard to ITA No. 5852/Del/2016 (2007-08) is concerned, I find considerable cogency in the submissions of the assessee's counsel that the penalty order passed u/s. 271(1)(b) is liable to be quashed/annulled, because the "charge" was not specific in the Notice dated 27.3.2015 issued u/s. 274 r.w.s. 271, in which AO has simply placed tick

mark against the printed line “*you have without reasonable failed to comply with a notice u/s. 23(4)/23(2) of the Indian Income Tax Act, 1922 or u/s. 142(1)/143(2) of the I.T. Act, 1961 dated.....*”. Hence, the penalty in dispute deserves to be deleted. Even otherwise , I find that non-compliance was not intentional, because the assessee’s father (who used to look after the matters relating to income tax and follow up with the professional) was terminally ill due to cancer during such period and he ultimately died on 30.5.2015. In view of the above facts and circumstances, I hereby delete the penalty in dispute.

11. In the result, both the appeals of the Assessee are allowed.

Order pronounced in the Open Court on 28/02/2017.

SD/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated: 28/02/2017

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT TRUE COPY

By Order,

ASSISTANT REGISTRAR