

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 6842/DEL/2017 (A.Y 2013-14)

(THROUGH VIDEO CONFERENCING)

Sanjeev Garg C/o. U S Bhargava Advocate, 17, Ram Nagar, Ghaziabad Uttar Pradesh PAN:ACSPG3564B (APPELLANT)	Vs	ITO Ward-4(2)HSIDC Building, Vanijya Nikunj, Udyog Vihar Phase-5, Gurgaon Haryana (RESPONDENT)
--	----	--

Appellant by	Sh. Somil Agarwal, Adv
Respondent by	Sh. Prakash Dubey, Sr. DR

Date of Hearing	30.06.2021
Date of Pronouncement	23.07.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 30/08/2017 passed by CIT(A)-Ghaziabad, for assessment year 2013-14.

2. The grounds of appeal are as under:-

"1. That the penalty proceedings and also the penalty order are liable to be quashed because the "charge" had not been specified.

2. That on the facts of the case and under the law, the penalty u/s 271(1) (c) which had been levied by the Id AO and which has been confirmed by the Id CIT(A) deserves to be deleted .

3. That the lower authorities had failed to appreciate that in the given circumstances penalty u/s 271(l)(c) was not leviable, because the assessee

had himself offered the difference between the figures of capital gain initially computed and capital gain lately computed , for taxation.”

3. The assessee is an individual and earned income from purchase and sale of properties and shown income under the head capital gain. The assessee claim loss of Rs.1,50,000/- from house property as the interest paid on house loan. He also claimed deduction of Rs. 1,00,000/- under Chapter VIA. The assessee filed his return of income electronically on 30/03/2015 declaring total income of Rs. 56,95,330/-. The assessment was completed u/s 142(3) on 5/1/2016 thereby making addition of Rs.9,38,333/- in respect of difference found in calculation sheet of capital gain. Thus, his total income was assessed at Rs. 66,33,660/- penalty notice u/s 271(1)(c) was issued on 1/7/2016. The penalty order u/s 271(1)(c) of the Income Tax Act, 1961 was passed on 27/7/2016. Thereby imposing penalty of Rs.1,93,296/-.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT (A). The CIT (A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that we notice dated 1/7/2016 has not mentioned the actual limb of Section 271(1)(c) under which the penalty was levied. The Ld. AR relied upon the decision of the Hon'ble Karnataka High Court in case of CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Karnataka) in which SLP against this judgment has been dismissed by Hon'ble Supreme Court in VeerbhadrappaSangappa (Supra). The Ld. AR also relied upon the decision of the Hon'ble Delhi High Court in case of PCIT Vs. M/s Sahara India Life Insurance Company Ltd. ITA No. 475/20 order dated 2/8/2019.

6. The Ld. DR submitted that the notice has mentioned both the limbs i.e. concealing particulars of income and furnishing inaccurate particulars of income. Thus, the Ld. DR submitted that the notice is valid. The Ld. DR relied upon the assessment order, penalty order and the order of the CIT(A).

7. We have heard the Ld. DR and perused all the relevant material available on record. The penalty notice is on both the limbs but the penalty order is restricting itself to that of furnishing of inaccurate particulars. The calculation sheet of capital gain which was filed by the assessee during the assessment proceedings as clearly set out that there was a difference of Rs. 9,38,333/- which was subsequently offered for tax by the assessee. The assessee submitted that the same was inadvertently done and was not deliberate. It is pertinent to note that the assessee after receiving the notice u/s 143(2) filed revised computation after coming to the knowledge that the assessee has filed the calculation sheet of the capital gains and offered the same for taxation. Thus, the assessee has admitted the mistake before the Assessing Officer could detect such omission. Thus, it is not a case of furnishing of inaccurate particulars or concealment of income before the Assessing Officer. Section 271 of the Act comes into picture when there is a failure to furnish returns or there is concealment of income or furnishing of inaccurate particulars before the Assessing Officer. But in the present case before the Assessing Officer, all the relevant facts were already available and the mistake has been rectified by the assessee prior to the mistake pointed out by the Assessing Officer to the assessee during the assessment proceedings. Therefore, the order of the CIT(A) is not correct, as there is no concealment of income or furnishing of inaccurate particulars. The penalty levied u/s 271(1)(c) of the Act is therefore quashed. The appeal of the assessee is allowed. Thus, it does not amount to inaccurate furnishing of particulars or concealment of income tax.

8. In result, appeal of the assessee is allowed.

Order pronounced in the Open Court on this 23rd Day of July, 2021.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 23/07/2021

*R. Naheed **

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI