

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

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER

ITA No.431/Del/2020
(Assessment Year : 2011-12)

Zile Singh Kashyap C/o. Gourav Sachdeva & Co. CA, A-8, Kewal Park Extn., South Extn., New Delhi-110 033 PAN No. AHFPK 1369 Q (APPELLANT)	Vs.	ITO Ward - 47(1) New Delhi (RESPONDENT)
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Assessee by	-None-
Revenue by	Ms. Sangeeta Yadav, Sr. D.R.

Date of hearing:	28.03.2023
Date of Pronouncement:	06.04.2023

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is directed against the order dated 15.11.2019 passed by the Commissioner of Income Tax (Appeals)-16, Delhi under Section 250 of the Income Tax Act, 1961 for Assessment Year 2011-12.
2. Brief facts of the case as culled out from the material on record are as under :-
3. Assessee is an individual and stated to be proprietor of Jai Balaji Group. AO has noted that information was received from DDIT(Inv.) Unit, Mumbai that the firms/concerns operated by Anil

Kumar Jain and Mr. Praveen Kumar Jain and their associates were providing accommodation entries to various beneficiaries. On analysis of the bank statement of Kritvi Enterprises Pvt. Ltd. which was operated by Anil Kumar Jain and Mr. Praveen Kumar Jain, it was noticed that assessee was in receipt of bogus entries of Rs.15,00,000/- on different dates during the Financial Year 2010-11. AO noted that a perusal of data of AST Systems reveals that though the assessee had filed return of income for A.Y. 2011-12 but the bogus purchases/accommodation entries of Rs.15,00,000/- was not disclosed while preparing taxable income. He was therefore of the view that Rs.15,00,000/- has escaped the assessment, accordingly notice u/s 148 of the Act dated 31.03.2018 was issued and served on the assessee. AO noted that notice u/s 142(1) and 143(2) were issued but there were no representation from the side of the assessee. AO thereafter noted that since there was no representation from the assessee and the assessment was getting time barred, he passed the order u/s 147/144 of the Act vide order dated 28.11.2018 wherein he made addition of Rs.15,00,000/-. On the aforesaid addition of Rs.15,00,000/-, AO vide penalty order passed u/s 271(1)(c) levied the penalty of Rs.3,13,120/-. Aggrieved by the order of penalty order passed by AO, assessee carried the matter before CIT(A) who vide order dated 15.11.2019 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

- “1. That in the facts and circumstances of the case, the A.O. erred in imposing penalty without service of notice to assessee.*
- 2. That in the facts and circumstances of the case, the A.O. erred in imposing penalty since in the quantum order charge on penalty has been initiated has not been specified i.e. whether for*

concealment of income or for furnishing inaccurate particulars of income.

3. *That the show cause notices are fatally defective for not specifying the charge as to whether for concealment of income or for furnishing inaccurate particulars of income, making the initiation as well as whole proceedings invalid and unsustainable in law.*

4. *That without prejudice, the penalty of Rs. 3,13,120/- u/s.271(1)(c) is unsustainable even on merits."*

4. The case file reveals that there is no appearance though the case was listed for hearing in the past. On the present date of hearing also there was no appearance from the side of assessee despite the service of notice by RPAD. The case file further reveals that notices issued for hearing through RPAD were returned undelivered with the remark 'no such person'. In such a situation, we proceed to dispose of the appeals *ex parte qua* the assessee and after hearing the Learned DR.

5. The grounds raised by assessee reveals that assessee is challenging the levy of penalty u/s 271(1)(c) of the Act. Vide ground No.3 it is the contention of the assessee that no charge has been pointed out either in the assessment order or in the penalty order as to whether it is the case of concealment of income or furnishing of inaccurate particulars of income.

6. Before us, Learned DR supported the order of lower authorities.

7. We have heard the Learned DR and perused the material available on record. The perusal of the assessment order dated

28.11.2018 reveals that in the assessment order addition has been made of Rs.15,00,000/- but no satisfaction has been recorded by AO as to whether it is the case of the concealment of income or the case of furnishing of inaccurate particulars of income. AO has only stated in the assessment order that initiate penalty proceedings u/s 271(1)(b) and 271(1)(c) of the Act. In the penalty order passed on 28.05.2019 AO has levied the penalty for concealment of income. It is a settled law that while levying penalty the AO has to record satisfaction and thereafter come to a finding in respect of one of the limbs, which is specified under section 271(1)(c) of the Act. The first step is to record satisfaction while completing the assessment as to whether the assessee had concealed the income or furnished inaccurate particulars of income. Thereafter, notice u/s 274 read with Section 271(l)(c) of the Act is to be issued to the assessee. The Assessing Officer thereafter has to levy penalty under Section 271(l)(c) of the Act for non-satisfaction of either of the limbs. While completing the assessment, the Assessing Officer has to come to a finding as to whether the assessee has concealed the income or furnished inaccurate particulars of income. The Hon'ble Bombay High Court in CIT vs. Samson Perinchery (2017) 392 ITR 4 (Bom) has held that where initiation of penalty is one limb and the levy of penalty is on other limb, then in the absence of proper show cause notice to the assessee, there is no merit in levy of penalty.

8. Considering the facts of the present case in the light of the aforesaid decision of Hon'ble Bombay High Court in the case of Samson Perinchery (supra) we are of the view that in the present case, the basic condition for levy of penalty has not been fulfilled and that the penalty order suffers from non-exercising of jurisdiction

power of AO. Considering the totality of the aforesaid facts, we are of the view that the conditions stipulated u/s 271(1)(c) for the levy of penalty are not attracted in the present case. We therefore, direct its deletion. **The ground of assessee is allowed.**

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

Order pronounced in the open court on 06.04.2023

Sd/-

**(YOGESH KUMAR US)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 06.04.2023

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Copy forwarded to:

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

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