

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “बी” नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: ‘B’ NEW DELHI**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं डॉ.बी. आर. आर. कुमार, लेखा सदस्य के समक्ष

**BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER &
DR. B.R.R.KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No:- 1585/Del/2017
निर्धारण वर्ष / Assessment Year: 2009-10

Etisha Finance & Investment Pvt. Ltd.,
4380/4-B, Ansari Raod,
Kaushalaya Building, Daryaganj,
New Delhi-110002.

PAN-AAACE1803C

.....अपीलार्थी / Appellant

vs

ACIT,
Central Circle-11,
New Delhi-110055.

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None

प्रत्यर्थी की ओर से / Respondent by : Ms. Ashima Neb, Sr.DR

सुनवाई की तारीख / Date of Hearing : 07.10.2019	घोषणा की तारीख / Date of Pronouncement: 16.10.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-23, New Delhi, dated 14.02.2017 relating to assessment year 2009-10 against penalty levied u/s section 271(1)(c) of the Income-tax Act, 1961 (in short ‘the Act’). None was present on behalf of the assessee.

2. The only issue raised in the present appeal is against the levy of penalty for concealment u/s 271(1)(c) of the Act.

3. Briefly the facts and circumstances of the case are that the assessee had filed return of income declaring NIL income. Thereafter, assessment proceedings were initiated against the assessee and addition was made in respect of the alleged advance made of Rs.60 Lacs, which was added in the hands of the assessee as unaccounted income. The Assessing Officer made the addition in the hands of the assessee and initiated penalty proceedings observing as under:-

“Penalty proceedings for furnishing inaccurate particulars of income and concealing the particulars of income are initiated under section 271(1)(c) of the Act separately.”

4. Thereafter, penalty was levied at Rs.18,54,000/- u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. The said penalty was confirmed by the CIT(A), against which the assessee is in appeal.

5. The limited issue which arises in the present appeal is whether where the Assessing Officer has failed to record the satisfaction in the assessment order as to which limb of section 271(1)(c) of the Act has not been fulfilled by the assessee, is the levy of penalty to be upheld in the case of the assessee.

6. Penalty proceedings u/s 271(1)(c) of the Act are attracted where the assessee had either concealed its income or furnished inaccurate

particulars of income. For default of either of the limbs of the said section, the assessee can be held liable for levy of penalty of concealment. However, the Assessing Officer while initiating penalty proceedings has to come to a finding in this regard. In the present case, we find that the Assessing Officer has failed to record the satisfaction as to which limb of the said section has not been fulfilled by the assessee. In the absence of the same i.e. where the assessee has not been given any show cause notice as to which limb of section 271(1)(c) of the Act has not been fulfilled by the assessee, the levy of the penalty in this circumstances is not justified. In this regard, we find support from the ratio laid down by the Hon'ble Bombay High Court in the case of CIT Vs. Shri Samson Perinchery (2017) 392 ITR 4 (Bom). Applying the said ratio, we delete the penalty levied u/s 271(1)(c) of the Act.

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

Order pronounced in the open court on 16th day of October, 2019.

Sd/-

(B.R.R.KUMAR)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली / दिनांक Dated : 16th October, 2019.

** Amit Kumar **

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार,
आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi