

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-1 : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.2303/Del/2019
Assessment Year: 2014-15

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| Unicare Developer & Infrastructure Pvt. Ltd., 71/7A, FF, Rama Road, New Delhi. | Vs. | ITO, Ward-27(1), New Delhi. |
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PAN: AABCU3616N

(Appellant)

(Respondent)

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| Assessee by | : | Shri K.R. Manjani, Advocate |
| Revenue by | : | Shri Om Parkash, Sr. DR |
| Date of Hearing | : | 16.11.2021 |
| Date of Pronouncement | : | 23.12.2021 |

ORDER

This appeal filed by the assessee is directed against the order dated 7th January, 2019 of the CIT(A)-28, New Delhi, relating to Assessment Year 2014-15.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the CIT(A) in sustaining the penalty of Rs.10,88,922/- levied by the AO u/s 271(1)(c) of the IT Act.

2.1 Facts of the case, in brief, are that the assessee is a company engaged in the business of acquiring agricultural land and converting the same into land use, plotting the same into residential and commercial by giving various offers and

advertisements in the newspapers. It filed its return of income on 19th January, 2016 declaring the loss of Rs.2,07,08,859/-. The case of the assessee was selected for scrutiny through CASS. In response to the statutory notices issued by the AO, the AR of the assessee appeared from time to time and filed the requisite documents. The AO completed the assessment u/s 143(3) of the Act determining the total income of the assessee at Rs.14,38,690/- wherein he made the following additions:-

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| i) | Disallowance out of advertisement expenses of Rs.1,58,20,489 | Rs.47,46,146/- |
| ii) | Addition on account of unexplained investment | Rs.33,41,000/- |
| iii) | Addition on account of unexplained commission expenses | Rs.10,00,000/- |
| iv) | Addition on account of unexplained advances received from parties | Rs.1,00,00,000/- |
| v) | Addition of undeclared income of FD interest | Rs.1,83,020/- |

3. Subsequently, the AO initiated penalty proceedings u/s 271(1)(c). Rejecting the various explanations given by the assessee, the AO levied penalty of Rs.10,88,922/- being 100% of the tax sought to be evaded on the addition of Rs.33,41,000/- added by him on account of unexplained investment and Rs.1,83,020/- added on account of undeclared interest income.

3.1 In appeal, the Id.CIT(A) confirmed the penalty levied by the AO.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

On facts and circumstances of the case the Learned A.O. as well as , the Ld. CIT(A) have erred in imposing and upholding of penalty, even though purchase of property of Rs. 33,41,000/- is from Books of Accounts, duly

reflected in cash Book, Ledger & Balance Sheet. Similarly imposition of penalty on Rs. 1,83,020/- Interest of swift account which was not credited in passbook till 31.03.2014 & Assessee was not aware of this nor was TDS certificate for this intt. supplied to the Appellant. There is thus no Question of concealment especially when this bank Account in which this Intt. Is credited in next year could not be concealed, it being in the Balance Sheet & knowledge of Department.

Dismissal of appeal by CIT(A) is arbitrary, without application of mind & bad in Law even though complete facts were duly brought to knowledge of CIT(A) (which was not new evidence) and the Ld. CIT(A) should have decided appeal on fact though non furnishing of reply to the A.O. could be due to its counsel, staff, etc.

It is prayed that penalty levied may be cancelled.ö

5. The ld. Counsel for the assessee, at the outset, drew the attention of the Bench to the copy of the notice issued u/s 274 r.w.s. 271 of the Act dated 29th December, 2016 and submitted that the AO has not struck off the inappropriate words in the said notice and the notice is vague and incomplete and, therefore, the penalty proceedings have to be quashed. Referring to the copy of the assessment order, he submitted that here also the AO has not mentioned anything regarding the penalty and at the last para of the assessment order, the AO has simply mentioned: öpenalty proceedings u/s 271(1)(c), 271B and 271F of the IT Act have been initiated separately.ö He accordingly submitted that in view of the decision of the Honøble Delhi High Court in the case of PCIT vs Sahara India Life Insurance Company Ltd. vide ITA No.426/2019, order dated 02.08.2019 the penalty levied by the AO and sustained by the CIT(A) being not in accordance with the law has to be deleted.

6. So far as the merit of the case is concerned, the Id. Counsel for the assessee submitted that all the details are recorded in the books of account and, therefore, the Id.CIT(A) was not justified in sustaining the penalty levied by the AO.

7. The Id. DR, on the other hand, heavily relied on the order of the CIT(A).

8. I have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find, the AO, in the instant case, levied penalty of Rs.10,88,922/- u/s 271(1)(c) of the IT Act, 1961 on account of the concealed income of Rs.35,24,020/- which comprises of two parts, namely, unexplained investment of Rs.33,41,000/- and undeclared interest income of Rs.1,83,020/-. I find, the Id.CIT(A) sustained the penalty levied by the AO on the ground that the assessee failed to offer any explanation in respect of investment in property during the assessment and penalty proceedings and also could not give the reasons for not showing the interest income. It is the submission of the Id. Counsel for the assessee that the entries relating to investment in property are already recorded in the books of account. So far as the interest on FD is concerned, it is his submission that due to non-intimation by the bank regarding the accrual of interest and in absence of any TDS on such interest income, the assessee was not aware of any accrual of interest for which it could not declare the interest income. It is also his submission that there is no specific charge against the assessee in the penalty notice since the inappropriate words have not been struck off and even in the assessment order also there is no specific

charge against the assessee for concealment of income or furnishing of inaccurate particulars. Thus, according to the assessee, in absence of any proper charge by the AO in the notice issued u/s 274 r.w.s. 271(1) of the IT Act, the penalty proceedings not being in accordance with the law have to be quashed.

9. I find some force in the arguments of the Id. Counsel for the assessee regarding the validity of the penalty proceedings in the instant case. A perusal of the notice issued u/s 274 r.w.s 271 of the IT Act, 1961 issued by the AO on 29th December, 2016 shows that the inappropriate words in the said notice have not been struck off. For ready reference, the notice so issued by the AO is reproduced as under:-

I.T.N.S.-29

आयकर अधिनियम, 1961 की धारा 271 के साथ पढ़ी गई धारा 274 के अधीन नोटिस
NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Income Tax Office,
New Delhi

To

M/s. Unicare Development Pvt. Ltd.
Imprestment Pvt. Ltd.
7/7-A, 1st floor, Ramesh Road,
New Delhi - 110015

Dated: 29/12/2016

Whereas in the course of proceedings before me for the assessment year 2011-12 it appears to me that you:-

*have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961 dated

*have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2, 3, 4 and 5.

You are hereby requested to appear before me at 11.30 A.M./P.M. on 25/02/2017 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.

Assessing Officer

Seal

UNIKAR SINGH
Income Tax Officer
Section 274, Room No. 199
C-2, Building, New Delhi

appropriate words and paragraphs.

10. I find, the Honøble Delhi High Court in the case of PCIT vs Sahara India Life Insurance Company Ltd. (supra) held that the notice issued by the Assessing Officer is bad in law since it did not specify under which limb of section 271(1)(c) of the Act, the penalty proceedings have been initiated i.e. whether for concealment of income or for furnishing of inaccurate particular of income. Since, the AO in the instant case has not struck off the inappropriate words in the notice issued u/s 274 r.w.s. 271 of the Act dated 29th December, 2016 and the notice does not indicate the proper charge, i.e., under which limb of section 271(1)(c) of the IT Act the penalty proceedings have been initiated, therefore, respectfully following the decision of the Honøble Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Company Ltd. (supra), I hold that the penalty proceedings are not in accordance with the law. The penalty levied by the AO and confirmed by the CIT(A) is accordingly directed to be deleted.

11. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 23.12.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 23rd December, 2021

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi