

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-2' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 6167/DEL/2019 (A.Y 2010-11)

(THROUGH VIDEO CONFERENCING)

Ram Singh Saini C/o RRA Tax India D-28, South Extension Part-1, New Delhi CNEPS9277E (APPELLANT)	Vs	ITO Ward-1(5) Faridabad, Haryana (RESPONDENT)
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Appellant by	Sh. Saumil Agarwal, Adv
Respondent by	Sh. Farhat Khan, Sr. DR

Date of Hearing	02.03.2021
Date of Pronouncement	02.03.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 31/05/2019 passed by the CIT(A)- Faridabad for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

“ 1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in upholding the action of Ld. A.O. in imposing penalty of Rs. 4,97,500/-, u/s 271(1) H C and that too without assuming jurisdiction as per law and without appreciating the facts, and circumstances of the case and that too without giving any opportunity of hearing.

2. That in any case and in any view of the matter, the action of Ld CIT(A) in

confirming the action of Ld. A.O in imposing penalty of Rs.4,97,500/- is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.

3. That having regard to the facts and circumstances of the case; Ld. A.O. has erred in law and on facts in imposing a of R 4,97,500/- that too without recording mandatory "satisfaction" as per law.

4. That having regard to the facts and circumstances of the case Ld. A.O. has erred in law and on facts in that penalty notice was vague and inapplicable clause was not struck off.

5. That having regard to the facts and circumstances of case, Ld. A.O has erred in law and on facts in imposing penalty without giving an adequate opportunity of being heard and by not observing the principles of natural justice."

3. The assessee is agriculturist. The assessee received amount as enhanced compensation for acquisition of Agricultural Land by HUDA and interest thereon in consequent upon the decision of the Hon'ble High Court dated 21.02.2007. The Assessing Officer made addition of Rs. 19,30,036/- as interest income received in respect of enhanced compensation observing thereby that the assessee concealed the income. The assessment was passed u/s 144 of the Act observing thereby that the assessee concealed the income. In the meanwhile, the penalty proceedings were initiated and the penalty is imposed under Section 271(c) of the Act. The penalty is imposed u/s 271(1)(c) of the Income Tax Act, 1961.

4. The Ld. AR submitted that there was no information which shows the concealment of income which will attract the concealment penalty. This is not a regular income of the assessee which can be said as concealed. This was the amount of compensation and interest on late payment of compensation. The compensation is exempt but the interest was taxable. The assessee has no detail of calculation of this amount received. This information was later on

taken from HUDA with the help of the Assessing Officer. The Ld. AR submitted that the notice dated 20/6/2014 has not given a specific charge for penalty. The Ld. AR submitted that the CIT(A) erred in confirming the penalty u/s 271(1)(c) of the Act as under which limb of Section 271(1)(c), the penalty is levied was not mentioned in the notice issued under Section 271(1)(c) read with Section 274 of the Act. The Ld. AR submitted that whether the penalty is for concealment of income or furnishing of inaccurate particulars of income was not evident from the notice nor from the penalty order as well. The Ld. AR further submitted that the penalty provision being quasi judicial, unless there is specific charge there cannot be levy of penalty. Therefore, the order levying penalty is wrong and bad in law. The Ld. AR relied upon the decision of the Hon'ble Supreme Court in case of CIT vs. SSA's Emerald Meadows (2016) 73 Taxman.com 248 (SC) and CIT v. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Kar). The Ld AR further submitted that the Hon'ble Delhi High Court in case of Pr. CIT Vs. M/s. Sahara India Life Insurance Company Ltd. (ITA No.475/2019 vide order dated 02.08.2019) held that notice issued by the Assessing Officer would be bad in law if it did not specify which limb of Section 271(1)(c) of the penalty proceedings had been initiated.

5. The Ld. DR submitted that the penalty order is very clear that the penalty is imposed on concealment of income and, therefore, merely not mentioning the specific limb of Section 271(1)(c) will not make the penalty order bad in law. The Ld. DR relied upon the Assessment Order, Penalty order and the order of the CIT(A). The only ground pressed by the Ld. AR is that appropriate limb of Section 271(1)(c) has not been struck off. The underlying contention is that the assessee would thereby not know what allegation to respond to. The Ld. DR relied on the ratio in the case of M/s Sundaram Finance vs. ACIT (Madras High Court order dated 23.04.2018) where it has been held on the issue of not striking one limb or the other of Section 271(1)(c) of the Act. In this case, admittedly there has been no appearance by the assessee either at assessment or at appellate stages. Hence assessee is

precluded from taking the plea that he has been put to prejudice by not striking off the appropriate limb of Section 271(l)(c).

6. We have heard both the parties and perused all the relevant materials available on record. First of all, in the notice issued u/s 274 r.w.s 271(1)(c) of the Income Tax Act, 1961, there was no specific charges as relates to concealment of income or furnishing of inaccurate particulars of income. From the notice dated 14/02/2014 produced by the Ld. AR during the hearing, it can be seen that the Assessing Officer was not sure under which limb of provisions of Section 271 of the Income Tax Act, 1961, the assessee is liable for penalty. In the present case the enhanced compensation and interest received thereon was taken into account but the Assessing Officer observed that the interest received on compensation or interest received on enhanced compensation is taxable under the income from other sources and will not come under the purview of the exemption under Section 10(37) of the Act. Thus, the Assessing Officer initiated penalty under Section 271(1)(c) of the Act as relating to concealment of income due to the fact that the assessee had not filed the return of income and never declared the compensation and the interest received thereon. Merely not filing the return of income cannot amount to concealment of income. Therefore we are taking up the contention of the assessee that there is no particular limb mentioned in the notice issued under Section 271(1)(c) r.w.s. 274 of the Act. This issue is squarely covered by the decision of the Hon'ble Supreme Court in case of M/s SSA' Emerald Meadow. The extract of the decision of the Hon'ble Karnataka High Court in M/s SSA' Emerald Meadows are as under which was confirmed by the Hon'ble Apex Court:

"3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while

allowing the appeal of the assessee, has relied on the ITA No. 4913/Del/2015 decision of the Division Bench of this Court rendered in the case of COMMISSIONER OF INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565.

4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed."

Thus, Additional Ground No. (ii) of the assessee's appeal is allowed. Since the inception of the notice issued u/s 271(1)(c) has become null and void, there is no need to comment on merit of the case. The Penalty u/s 271(1)(c) of the Act is quashed."

Since in the instant case also the inappropriate words in the penalty notice has not been struck off and the notice does not specify as to under which limb of the provisions, the penalty u/s 271(1)(c) has been initiated, therefore, we are of the considered opinion that the penalty levied u/s 271(1)(c) is not sustainable and has to be deleted. Although the Ld. DR submitted that mere non-striking off of the inappropriate words will not invalidate the penalty proceedings, however, the decision of the Hon'ble Karnataka High Court in the case of SSA'S Emerald Meadows (supra) where the SLP filed by the Revenue has been dismissed is directly on the issue contested herein by the Assessee. Further, when the notice is not mentioning the concealment or the furnishing of inaccurate particulars, the ratio laid down by the Hon'ble High Court in case of M/s. Sahara India Life Insurance Company Ltd. (supra) will be applicable in the present case. The Hon'ble Delhi High Court held as under:

"21. The Respondent had challenged the upholding of the penalty imposed under Section 271(1)(c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) and observed that the notice issued by the AO would be bad in law if it did not specify which limb of Section 271(1)(c) the penalty proceedings had been initiated under i.e. whether for concealment of particulars of income or for furnishing of

inaccurate particulars of income. The Karnataka High Court had followed the above judgment in the subsequent order in Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 Taxman.com 241(Kar), the appeal against which was dismissed by the Supreme Court of India in SLP No. 11485 of 2016 by order dated 5th August, 2016.

22. *On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises.”*

The reliance of the Ld. DR in respect of Sunderam Finance Ltd. (supra) cannot be taken into account in toto in the present case as the jurisdictional High Court in case of Sahara India Life Insurance Co. Ltd. (supra) has clearly set out the necessity of the actual provisions for which the penalty is issued by the Revenue. Thus, notice under Section 271(1)(c) r.w.s. 274 of the Act itself is bad in law. We, therefore, set-aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied.

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

Order pronounced in the Open Court in presence of both the parties on this 02nd Day of March, 2021

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 02/03/2021
R. Naheed *

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI