

THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 7090/DEL/2017
Assessment Year: 2013-14]

HN Reacon [P] Ltd
690, Sunlight Colony
Ashram, New Delhi

Vs.

The Dy. C.I.T
Circle 11(1)
New Delhi

PAN: AABCH 3998 Q

[Appellant]

[Respondent]

Date of Hearing : 07.04.2021

Date of Pronouncement : 07.04.2021

Assessee by : Shri Raj Kumar, CA

Revenue by : Ms. Kirti Sankratyayan, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 35, New Delhi dated 14.09.2017 pertaining to Assessment
Year 2013-14.

2. The assessee is aggrieved by the levy of penalty u/s 271(1)(c) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] and contends that the penalty show cause notices are fatally defective for not specifying the specific reason for initiating the penalty proceedings u/s 271(1)(c) of the Act.

3. Representatives were heard at length, case records carefully perused.

4. Notice dated 07.03.2016 reads as under:

/TN5-29

"Notice Under Section 274 Read With Section 271 (I)(c)
of the Income Tax Act-1961

Date 07.03.2016

M/s H N Reacon (P) Ltd.
707,7TH FLOOR,26, KG MARG,
KAILASHBUILDING,
New Deihi-110001

Where in the course of proceeding before me for the assessment year 2013-14 it appears to me that you:-

You are requested to appear before me at 11:30 A.M./PM on 31.03.2016 and show cause why an order imposing a penalty on you should not be made under section 271(1)(c) of the Income Tax Act, 1961. If you do not wish to avail yours^{1*} 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(1)(c).

Place : New Delhi

Date : 07.03.2016

'Delete inappropriate paragraphs and words

Certified True Copy

Sd

Jai Prakash Sbarma
Chartered Accountant"

5. Notice dated 03.08.2016 reads as under:

OFFICE OF THE
DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-II(1),
ROOM NO. 247, C.R. BUILDING, I.P. ESTATE, NEW DELHI-110002

I. No. DC/II/Circle-II(1)/2016/2017-18 Dated: 03.08.2016

To, P.W. AABCH3978 Q

The Principal Officer,
M/s H N Recon Pvt Ltd,
207/208, 1st Floor, Kailash Building, 26 KGS Marg,
New Delhi-110001.

Sir,
Subject: ~~Penalty proceedings u/s 271(c) of the Income Tax Act, 1961 for the~~
~~Assessment Year-2013-14- Reg~~

Please refer to the above.

2. Penalty proceedings u/s 271(1)(c) were initiated and notice u/s 271 read with section 274 of the Income Tax Act, 1961 was issued you at the time of completion of the assessment u/s 143(3) of the IT Act, 1961. Penalty proceedings initiated in your case are still pending.

3. You are, therefore, once again requested to show cause as to why penalty u/s 271(1)(c) may not be levied upon the company for the year under consideration. Your reply in this regard may be received in this office on or before 12.08.2016. Please note that in case of non compliance, it will be presumed that you don't have any explanation/evidence to offer on the captioned subject and the proceedings will be finalized on merits on the basis of material available on record.

Yours faithfully,

(SHELENDRA SRIVASTAVA)
Dy. Commissioner of Income Tax
Circle-II(1), New Delhi

(SHELENDRA SRIVASTAVA)
Dy. Commissioner of Income Tax
Circle-II(1), C.R. Building,
New Delhi



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Jai Prakash Sharma

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JPS
Jai Prakash Sharma
Chartered Accountant

6. A perusal of the aforementioned notices clearly show that the Assessing Officer has grossly failed in not specifying the charge initiating the penal proceedings u/s 271(1)(c) of the Act. In our considered opinion, unless the assessee knows under which limb of the penalty notice he has to defend his case, it would not be possible to accept that the notices are valid.

7. The Hon'ble High Court of Delhi in the case of Sahara India Life Insurance Company Ltd ITA No. 475 of 2019 order dated 02.08.2019 under similar circumstances, has 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."

8. Respectfully following the findings of the Hon'ble Jurisdictional High Court [supra] we hold that the penalty notices u/s 274 r.w.s 271(1)(c) of the Act mentioned hereinabove are defective and bad in law. We, accordingly, direct the Assessing Officer to delete the penalty so levied u/s 271(1)(c) of the Act.

9. In the result, the appeal of the assessee in ITA No. 7090/DEL/2017 is allowed.

The order is pronounced in the open court on 07.04.2021 in the presence of both the rival representatives.

Sd/-

[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 07th April, 2021

VL/

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	