

IN THE INCOME TAX APPELATE TRIBUNAL

DELHI BENCH "A": NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

**ITA Nos. 5788, 5789 & 5790/Del/2014**

A.Yrs. : 2007-08, 2008-09 & 2009-10

MR. ASHOK KUMAR CHORDIA,  
B-5, 1<sup>ST</sup> FLOOR, CAPTAIN GAUR MARG,  
EAST OF KAILASH,  
NEW DELHI - 110 065  
(PAN: ADMPC6791P))  
**(Appellant)**

VS. DCIT, CENTRAL CIRCLE-1  
NEW DELHI

**(Respondent)**

Assessee by : Sh. Satish Aggarwal, CA  
Department by : Smt. Aparna Karan, CIT(DR)

**ORDER**

**PER H.S. SIDHU, JM**

These appeals by the Assessee are directed against the respective Orders, all dated 11.9.2014 of the Ld. Commissioner of Income Tax (Appeals)-III, New Delhi pertaining to assessment year 2007-08, 2008-09 and 2009-10 respectively. Since the issues involved in these appeals are identical and common, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience, by dealing with ITA No. 5788/Del/2014 (AY 2007-08).

2. The grounds of appeal raised in the assessee's appeal No. ITA No. 5788/Del/2014 (AY 2007-08) read as under:-

*"1. That the order of Ld. CIT(A) is arbitrary, biased and bad in law and on facts of the case.*

*2. That the Ld. CIT(A) has grossly erred in confirming the levy of penalty of Rs. 3,51,693/- under section 271(1)(c) of the Act ignoring the fact that there was no difference between returned and assessed income.*

*3. That the Ld. CIT(A) has grossly erred I in confirming the levy of penalty under section 271(1)(c) of the Act by ignoring the fact that the appellant had neither furnished inaccurate particulars of his income nor concealed his income.*

*4. That the Ld. CIT(A) has grossly erred in confirming the levy of penalty under section 2712(1)(c) of the Act by summarily brushing aside the submissions of the appellant.*

*The appellant craves leave to add, amend, alter, or withdraw any of the grounds of appeal before or at the time of hearing of this appeal.*

2.1 In other 02 Appeals, identical issues are involved and similar grounds have been raised, the only difference is in the figures involved.

3. The brief facts of the case are that a search action was carried out on the assessee on 21.9.2010. During the course of search certain incriminating documents were found and seized. On confronting these incriminating documents the assessee in his statement recorded under section 132(4) of the Income Tax Act, 1961 (hereinafter referred as the Act) surrendered a sum of Rs. 1 Crore as his additional income comprising for different assessment years ranging from assessment year 2007-08 till assessment year 2011-12. For the year under consideration, the assessee declared a sum of Rs. 10,00,000/- as an additional income. Since in the return of income filed under Section 153A of the Act, the assessee disclosed this additional income over and above the income declared in the return of income filed under section 139(1) of the Act, hence, the AO held that on additional income of Rs. 10,00,000/- the penalty was leviable under section 271(1)© read with Explanation 5A and accordingly, AO imposed the penalty of Rs. 3,51,693/- u/s. 271(1)© of the Act vide order dated 30.9.2013.

4. Against the Penalty order the Assessee appealed before the Id. CIT(A), who vide his impugned order dated 11.9.2014 has dismissed the appeal of the assessee by confirming the penalty in dispute.

5. At the time of hearing, Ld. Counsel of the Assessee has stated that the penalty proceedings ought to fail, the penalty was initiated for concealment of income. However, the Notice dated 26.3.2013 for levy of penalty u/s. 271 read with Section 274 of the I. T. Act, 1961 was ambiguous and vague in as

much as it is stated both concealment of particulars of income or furnishing of inaccurate particulars. For the sake of reference, the copy of Notice dated 26.3.2013 for initiation of penalty proceedings and copy of penalty order dated 30.9.2013 were filed before the Bench. He further stated that entire penalty proceedings stand vitiated as the notice itself is not in accordance with law and in order to support his contention, he placed the reliance on the following decisions, by filing the copies thereof.

- Hon'ble Karnataka High Court decision in the case of CIT & Ors. Vs. M/s Manjunatha Cotton and Ginnig Factory & Ors. (2013) 359 ITR 565
- Apex Court decision in the case of CIT & Anr. Vs. M/s SSA's Emerald Meadows in CC No. 11485/2016 dated 05.8.2016.

In view of above, he requested that the penalty in dispute may be cancelled and appeal of the assessee may be allowed.

6. On the contrary, Ld. DR relied upon the orders of the authorities below.

7. We have heard both the parties and perused the orders passed by the Revenue Authorities alongwith the relevant records available with us. Firstly, we have perused the Notice dated 26.3.2013 issued by the AO for initiating the penalty and directing the assessee to appear before him at 11.30 AM on 26/04/2013 and issued a Show Cause to the assessee stating therein that

**“.....you have concealed the particulars of your income or furnished inaccurate particulars of such income...”.** After perusing the notice dated 26.3.2013 issued by the AO to the assessee, we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income or concealment of income as well as in the penalty order dated 30.9.2013 AO has stated that he is satisfied that the assessee has concealed particulars of his income, which is contrary to law. In view of above, the penalty is not sustainable in the eyes of law. Our aforesaid view is fortified by the following decisions:-

- i) “CIT & Anr. Vs. M/s SSA’s Emerald Meadows – 2015 (11) TMI 1620 – Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 decision of the Division Bench of this Court rendered in the case of Commissioner of

Income Tax vs. Manjunatha Cotton and Ginning Factory (2013) (7) TMI 620- Karnataka High Court. Thus 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 – decided in favour of assessee.”

- ii) CIT & Anr. Vs. M/s SSA's Emerald Meadows – Hon'ble Supreme Court of India – reported in 2016 (8) TMI 1145 – Supreme Court. The Apex Court held that High Court order confirmed (2015) (11) TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 – Decided in favour of assessee.”

8. In the background of the aforesaid discussions and respectfully following the precedents, we delete the penalty in dispute and decide the issue in favor of the assessee and against the Revenue.

9. As regards the other two appeals are concerned, following the consistent view as taken in ITA 5788/Del/2014 (AY 2007-08), as aforesaid, we delete the penalty in dispute in other two Appeals also being ITA Nos. 5789 & 5790/Del/2014 (AYrs. 2008-09 & 2009-10) and allow the grounds raised by the Assessee.

10. In the result, all the three appeals filed by the Assessee stand allowed.

Order pronounced on 05/12/2017.

**Sd/-**

**[PRASHANT MAHARISHI]  
ACCOUNTANT MEMBER**

**Sd/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

*Date: 05/12/2017*

**SRBhatnagar**

**Copy forwarded to: -**

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches