

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “D”, NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No.6044/Del/2015
Assessment Year : 2008-09**

Ashwani Mongia, C- 40, West Azad Nagar, Delhi.	Vs.	ITO, Ward- 35(3), New Delhi.
PAN : ACHPM2405L		
(Appellant)		(Respondent)

Assessee by : Shri Ved Jain, Adv.
Department by : Shri Arun Kumar Yadav, Sr.DR
Date of hearing : 21-05-2018
Date of pronouncement : 31-05-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 06.08.2015 of CIT(A)- 19, New Delhi relating to assessment year 2008-09.

2. Levy of penalty of Rs.6,83,163/- by the Assessing Officer u/s 271(1)(c) of the I.T. Act, 1961 which has been confirmed by the Id. CIT(A) is the only issue raised by the assessee in the grounds of appeal.

3. Facts of the case, in brief, are that the assessment in this case was completed u/s 143(3)/148 determining the total income at Rs.22,78,840/- wherein the Assessing Officer made addition of Rs.20,00,000/- u/s 68 of the I.T. Act since the assessee could not satisfactorily explain the loan of Rs.20,00,000/-

obtained from Shri Sanjay Mongia. Subsequently, the Assessing Officer initiated penalty proceedings u/s 271(1)(c) of the I.T. Act. Rejecting the various explanations given by the assessee, the Assessing Officer levied penalty of Rs.6,83,163/- being 100% of tax sought to be evaded.

4. In appeal, the ld. CIT(A) confirmed the penalty so levied by the Assessing Officer.

5. Aggrieved with such order of the ld. CIT(A), the assessee is in appeal before the Tribunal.

6. The ld. counsel for the assessee at the outset drew the attention of the Bench to the notice issued by the Assessing Officer u/s 274 r.w.s. 271 of the I.T. Act, 1961 dated 28.02.2014, copy of which is placed at page 59 of the Paper Book. Referring to the said notice, he submitted that the Assessing Officer has not struck off the inappropriate words in the said notice. Referring to the decision of the Hon'ble Supreme Court in the case of CIT vs. M/s SSA's Emerald Meadows vide CC No.11485/2016 order dated 05.08.2016, he submitted that the Hon'ble Supreme Court in the said decision has dismissed the SLP filed by the Revenue thereby upholding the decision of the Hon'ble Karnataka High Court wherein it has been held that the notice issued by the Assessing Officer u/s 274 r.w.s. 271 is bad in law as it did not specify under which limb of section 271(1)(c), the penalty proceedings has been initiated i.e.

whether for concealment of particulars of income or for furnishing of inaccurate particulars of income.

7. Referring to the decision of the Co-ordinate Bench of the Tribunal in the case of Ishween Kaur vs. ITO vide ITA No.1836/Del/2015 order dated 11.12.2015 and in the case of Ram Avtar Gupta & Co. vs. ITO vide ITA No.6286/Del/2017 order dated 10.04.2018 for assessment year 2006-07, he submitted that under identical circumstances the penalty levied by the Assessing Officer and confirmed by the Id. CIT(A) was deleted for non-striking of the inappropriate words. He submitted that the Tribunal in the said decision has considered the various decisions while cancelling the penalty so levied. He accordingly submitted that this being a covered matter in favour of the assessee, the penalty so levied by the Assessing Officer and confirmed by the Id. CIT(A) should be deleted.

8. The Id. DR on the other hand heavily relied upon the order of the Id. CIT(A). He submitted that the assessee was unable to explain the identity and creditworthiness of the loan creditor and the genuineness of the transaction for which addition was made. The assessee did not challenge the addition made by the Assessing Officer and the Assessing Officer in the order passed u/s 271(1)(c) has given justifiable reasons for levy of penalty which has been upheld by the Id. CIT(A). He submitted that since the assessee has concealed

the particulars of income and furnished inaccurate particulars of income, therefore, penalty so levied by the Assessing Officer and confirmed by the Id. CIT(A) should be upheld.

9. We have considered the rival arguments made by both the sides and perused the material available on record. A perusal of the notice issued u/s 274 r.w.s. 271 of the I.T. Act dated 28.02.2014, copy of which is placed at page 15 of the Paper Book, shows that the Assessing Officer has not struck off the inappropriate words. A perusal of the assessment order shows that the Assessing Officer at the end of the assessment order has mentioned “penalty proceedings u/s 271(1)(c) have separately been initiated”. This does not show as to whether the penalty has been initiated for furnishing of inaccurate particulars of income or for concealment of income. As mentioned earlier, the Assessing Officer has not struck off the inappropriate words in the penalty notice issued u/s 274 r.w.s. 271 of the I.T. Act. Therefore, following the decision of the Hon’ble Karnataka High Court in the case of M/s SSA’s Emerald Meadows (supra), we hold that very initiation of penalty proceeding is bad in law since notice issued by the Assessing Officer u/s 274 r.w.s. 271 does not specify under which limb of section 271(1)(c), the penalty proceeding has been initiated i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. Under these circumstances, we

cancel the penalty so levied by the Assessing Officer which has been confirmed by the Id. CIT(A). The grounds raised by the assessee are accordingly allowed.

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

Order pronounced in the open Court on this 31st May, 2018.

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 31-05-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi