

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI R.C. SHARMA, HON'BLE ACCOUNTANT MEMBER AND
SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER**

ITA NO.5379/MUM/2016 (A.Y: 2010-11)

D.C.I.T. – 13(1)(1)
Room No. 218, 2nd Floor
Aayakar Bhavan,
M.K. Road,
Mumbai-400 020

v. M/s. Navyug Krishi Sadhan Pvt. Ltd.,
Plot No. 1, Adarsh Housing Society,
Cross Road No. 2, Malad (W),
Mumbai – 400 064

PAN: AAACN 2326 D

(Appellant)

(Respondent)

Assessee by

**: Shri B.P. Purohit &
Shri Kushagra Rajpurohit**

Department by

: Shri V. Vidhyadhar

Date of Hearing

: 28.05.2018

Date of Pronouncement

: 03.08.2018

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 21, Mumbai dated 20.06.2016 for the Assessment Year 2010-11 in deleting the penalty levied u/s.271(1)(c) of the Act.

2. At the outset, Ld. DR submitted before us that the quantum appeal has been restored to the file of the Ld.CIT(A) by the Tribunal to call for

remand report and to decide the addition/disallowance afresh. Therefore, the Ld. DR submitted that the appeal may be restored to the file of the Ld.CIT(A).

3. On the other hand, Learned Counsel for the assessee submitted that, the notice issued u/s. 274 r.w.s. 271(1)(c) is bad in law, as the Assessing Officer did not specify for which limb of the notice the penalty is proposed to be levied and since the Assessing Officer did not strike off the irrelevant portion specifying the charge for which the penalty was to be imposed, the penalty order is bad in law. He placed reliance on the on the decision of the Hon'ble Bombay High Court in the case of CIT v. Samson Perinchery [392 ITR 4] and CIT v. Manjunath Cotton and Ginning Factory [359 ITR 565].

4. Ld. DR in the rejoinder submitted that this contention was not raised before the Ld.CIT(A) by the assessee, no such ground was raised before the Assessing Officer. Therefore, the matter may be restored to the file of the Ld.CIT(A).

5. We have heard the rival submissions, perused the orders of the authorities below. On hearing both the sides, we are of the view that this appeal should be restored to the file of the Ld.CIT(A) to decide afresh in accordance with law as the quantum appeal has been restored by the

Tribunal to the file of the Ld.CIT(A) and the contentions of the assessee that the notice issued u/s. 274 is bad in law has not be raised before the Ld.CIT(A). The assessee is at liberty to raise legal issue before the Ld.CIT(A). Thus, we restore this matter to the file of the Ld.CIT(A) for fresh adjudication in accordance with law along with quantum appeal.

6. In the result, appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced in the open court on the 03rd August, 2018

Sd/-
(R.C. SHARMA)
ACCOUNTANT MEMBER
Mumbai / Dated 03/08/2018
Giridhar, SPS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum