IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI

Before Sh. N. K. Saini, Hon'ble Vice President

ITA No. 3743/Del/2018 : Asstt. Year : 2013-14

Satpal Saini, C-1, Sector-53, Noida-201301	Vs	Income Tax Officer, Ward-3(3), Noida
(APPELLANT)		**(RESPONDENT)**
PAN No. BDRPS9119R		

Assessee by : Sh. Vivek Gupta, CA
Revenue by : Sh. Surender Meena, Sr. DR

Date of Hearing : 01.10.2018		**Date of Pronouncement : 28.11.2018**

ORDER

This is an appeal by the assessee against the order dated 21.03.2018 of ld. CIT(A)-1, Noida.

2. The only grievance of the assessee in this appeal relates to the sustenance of penalty of Rs.5,76,040/- out of the penalty of Rs.6,50,000/- levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

3. Facts of the case in brief are that the assessee was engaged in the business of manufacturing of fan blades and other electrical components on job work. The assessee filed the return of income on 30.09.2013 showing total income of Rs.5,23,220/-. However, the assessment u/s 143(3) of the Act was made on total income of Rs.33,29,530/-. The AO made the addition of Rs.27,96,311/- on account of capital gain from the sale of 4 kanal land situated in village Barkatabad. The said land was claimed to be agricultural land on which no capital gain was

chargeable. The AO, however, did not accept the claim of the assessee by observing that no agricultural income was shown by the assessee in the returns filed for the assessment years 2012-13 & 2013-14 and that the land was falling within 8 km from the municipal limits of Bahadurgarh. The AO also initiated the penalty proceedings u/s 271(1)(c) of the Act and levied the penalty of Rs.6,50,000/- by observing as under:

> *"4. Considering the facts of the case, I am satisfied that the assessee has willfully concealed his income to the extent of Rs.27,96,311/- and has rendered himself liable for the penalty u/s 271(1)(c) of Income-tax Act, 1961.*
>
> *5. The tax sought to be evaded on concealed income of Rs.27,96,311/- comes to Rs.5,76,040/-. The minimum and maximum penalty, therefore, works out at Rs.5,76,040/- and Rs.17,28,120/- respectively. Considering the facts and circumstances of the case, I hereby impose penalty under section 271(1)(c) of the Income-tax Act, 1961 at Rs.6,50,000/- (six lakh fifty thousand only). Issue notice of demand and challan."*

4. Being aggrieved the assessee carried the matter to the ld. CIT(A) and submitted that if the AO had not specifically mentioned for which limb of the provisions of Section 271(1)(c) of the Act, out of the available two limbs, intended to proceed, the penalty order becomes bad in law. It was further submitted that the AO did not strike out the provisions of Section 271(1)(c) of the Act as enumerated in the notice u/s 274 of the Act which was not intended to be applied in the case of the assessee, therefore, the penalty order was bad in law. The reliance was placed on the judgment of the Hon'ble Karnataka High Court in the case of CIT Vs Manjunath Cotton & ginning Factory (2013) 359 ITR 565.

5. The ld. CIT(A), however, did not find merit in the submissions of the assessee by observing as under:

"6. There is no denying that a notice u/s 274 of I.T. Act, 1961 was issued and served upon the appellant for considering its case for imposition of penalty u/s 271(1)(c) of I.T. Act, 1961, Admittedly, the provisions of Section 271(1)(c) of IT. Act, 1961 has two limbs, i.e., furnishing of inaccurate particulars of income and concealment of particulars of income. Both these limbs operate independent of each other and depending on the facts and circumstances of the case the Assessing Officer can apply either of these two limbs or in a particular case both the limbs can be applied by the Assessing Officer depending upon the facts and circumstances of the case.

7. The Hon'ble Karnataka High Court has therefore held that the Assessing Offices must make his intent to be clear which limb of the provisions of Section 271(1)(c) is intended to be applied by the Assessing Officer to the case before him, The Assessing Officer must clearly state in the notice u/s 274 of I.T. Act, 1961 whether he intends to examine the case of the appellant for the mischief of furnishing inaccurate particulars of income or for concealing the particulars of income and must strike off the limb of Section 271 (1)(c) which is not intended to be invoked in the case of the assessee who is being considered for levy of penalty u/s 271(1)(c) of I.T. Act, 1961. The purpose of such an act on the part of the Ld. AO is dear as the assessee being the defendant must clearly know what it is being accused of and what is required to be defended in the face of the clear knowledge of what is being held against the assessee.

8. However, the Hon'ble Karnataka High Court and thereafter the Hon'ble Bombay High Court has not held in any manner that an assessing officer cannot consider at the stage of issue of notice both the limbs of Section 271(1)(c) of I.T. Act, 1961. It is not the mandate of the Hon'ble Karnataka High Court that the two limbs of Section 271(1)(c) are mutually exclusive and if one applies the other stands precluded. Nowhere it is the mandate of Section 271(1)(c) either, Therefore, there can be three situations in a given case, The assessing officer can apply the provisions qua furnishing of inaccurate particulars of income or the provisions qua concealment of particulars of income or qua both. There may be a situation where a particular assessee may be guilty of both the limbs of Section 271(1)(c) of I.T. Act, 1961, i.e., furnishing inaccurate particulars of income as well as concealing the particulars

of income and in that situation the notice u/s 274 has to incorporate both the limbs of the provisions of Section 271(1)(c) of I.T. Act, 1961, If the assessing officer intends to apply both the limbs of Section 271(1)(c), the requirement of striking off of the limb not required to be applied will not arise, The Ld. Counsel for the appellant has brought nothing on record to even remotely show that the Ld. AO in the present case did not intend not to apply both the limbs of the provisions of Section 271(1)(c) of I.T. Act, 1961 and intended to apply only one limb of the said provision, i.e., either the provisions qua furnishing of inaccurate particulars of income or the provisions qua concealment of income. In view of this the reliance placed by the Ld. Counsel for the appellant on the law laid down by the Hon'ble Karnataka High Court is misplaced as the facts of the case of the appellant are not the same as were in the case before the Hon'ble Karnataka High Court. The reliance placed by the Ld. Counsel for the appellant on the order of the Hon'ble Bombay High Court is also misplaced on the same ground and does not help in the case of the appellant. The appellant has further placed reliance on the order dated 28.04.2017 of Ld. ITAT, Delhi Benches in the case of ITA No. 2555/Mum/2012 AY 2008-09 where also the Ld. ITAT has considered the case before them on the basis of the law laid down by Hon'ble Karnataka High Court. The same is also of no help to the appellant for the same reasons discussed hereinabove.

9. The objections being raised by the appellant regarding the validity of the impugned penalty order is further not sustainable in the eyes of the law as the ground being raised which is a mixed question of law as well as facts was not raised before the Ld. AO and is being raised as an afterthought and on counterblast. The appellant has not brought on record of this office and the present appeal in any manner whatsoever the notice issued by the Ld. AO for imposition of penalty u/s 271(1)(c) of I.T. Act, 1961. It is not possible for this office to ascertain the factual correctness of the claims advanced by the appellant for the simple reason that the appellant has not enclosed the copy of the notice issued by the Ld. AO u/s 274 for imposition of penalty u/s 271(1)(c) and which is being claimed by the appellant to be invalid in the eyes of the law.

10. It is trite that he who sets up the claim has to the correctness of the same. As it is the appellant who has claimed the notice issued by the Ld. AO u/s 274 to be invalid, it was incumbent upon the appellant to

prove the same. Not only the appellant has not brought tie said notice on the record of this office in the present appeal neither along with the Form 35 which was perfectly permissible nor in the course of the hearing thereafter it has also failed in proving any manner whatsoever its contention that the said notice was bad in law.

11. The appellant has also not explained why it did not contest the validity of the proceedings u/s 271 (1)(c) as initiated by the Ld. AO on the grounds of incurable defect in the notice issued by the Ld. AO u/s 274 before the Ld. AO in the course of the penalty proceedings conducted by the Ld. AO as the appellant had sufficient and reasonable opportunity of contesting the maintainability of the proceedings at the very threshold. The appellant has also not explained as to how the doctrine of waiver is not to be held against the appellant as the ground being taken qua the validity of the impugned penalty order not having been taken before the Ld. AO at the threshold stands waived by the appellant.

12. The doctrine of waiver being a theory of general law applies to the case of the appellant as same is not specifically excluded by the provisions of I.T. Act, 1961. Further, the revenue is protected by the enabling provisions of Section 292 (b)(d) of I.T. Act, 1961 as the case being made out on behalf of the appellant is that of that the Ld. AO served the notice u/s 274 upon the appellant in an improper manner. The ground being taken by the appellant qua the maintainability of the penalty proceeding would have been available to the appellant had that been taken before the Ld. AO also. As the appellant having all the opportunities in the world to raise this ground before the Ld. AO chose not to take that ground before the Ld. AO, the appellant cannot fall back on the same so late in the day.

13. Qua merits, admittedly the appellant had income liable to tax under the head "Income from capital gains" and has claimed the same to be exempt from tax in its return of Income claiming the capital assets sold by the appellant to be agricultural land and in inquiry the Ld. AO found that the claim of the appellant was not correct as the capital assets was not agricultural land in terms of the provisions of exclusion (iii) of Section 2(14) of I.T. Act, 1961 and the findings of the Ld. AO in this regard were accepted to be correct by tie appellant who also accepted

the assessment order passed by the Ld. AO and paid the tax that was due on this issue and demanded by the revenue. It is clear that the appellant had attempted to take a chance not to pay the taxes due on the sale of capital asset by making an Incorrect claim in its return of income. Under the scheme formulated by the CBDT regarding scrutiny of returns of income barely 1% returns are scrutinized and the rest are accepted under the provisions of Section 143(1) of I.T. Act, 1961. The law as operating does not permit or provide the revenue to take up any issue which requires determination after due application of mind or which is capable of being interpreted by the parties concerned and therefore, any claim which though being incorrect and incorrectly made in the return of income has a very bright chance of remaining undetected as the chances of such return of income getting taken up for scrutiny are quite remote. The appellant therefore, had a very good chance of getting away with its incorrect claims had its return of income not been taken up by the Ld. AO for scrutiny.

14. The statute permits correction of errors in the return of income within certain time. The provisions of Section 139(5) are available to an assessee who has in a bona fide manner made an incorrect or inadmissible claim in the return of income. In the present case, the appellant could have corrected its error if the same was bonafide and got made in good faith. The appellant made no such correction. No attempt was made by the appellant to revise the return of income to rectify the error in its claims in the return of income.

15. In such facts and circumstances, the contention of the appellant that there was no intent on its part to pay lesser tax has no merit and no substance. The appellant was taking a chance of getting its return of income accepted under the provisions of Section 143(1) of I.T. Act, 1961 and thereby getting away by paying no tax on the income from capital gains.

16. The appellant has therefore, furnished inaccurate particulars of its income and has also concealed the particulars of its income as the income from the capital gains was disclosed by the appellant inaccurately and was also concealed disguised as exempt from tax. The Ld. AO therefore correctly invoked the provisions of Section 271(1)(c) of I.T. Act, 1961 while framing the assessment order on the issue of

income arising from the incidence of transfer of capital assets of Immovable property which was wrongly and incorrectly claimed by the appellant in the return of income as agricultural land in terms of the provisions of Section 2(14) of I.T. Act, 1961 when the said land was squarely covered by the exclusion (iii) of the said provisions of law. In these circumstances, there was the possibility of the appellant having furnished inaccurate particulars of income as well as having concealed the particulars of income and there was also the possibility of both the situations The Ld. AO therefore correctly invoked both the limbs of the provisions of Section 271 (1)(c) of I.T Act, 1961 and issued the notice u/s 274 to the appellant correctly and appropriately.

17. In these facts and circumstances, there is no infirmity in the impugned penalty order The same is therefore confirmed. The appeal of the appellant fails and is dismissed. However, the quantum of penalty is restricted to the minimum amount of penalty as computed by the Ld. AO at Rs, 5,76,040/- against the penalty of Rs. 6,50,000/-. The quantum of penalty stands reduced to that extent. The Ld. AO is directed to issue a fresh demand notice to the appellant for payment of the correct amount of penalty."

6. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the findings given by the ld. CIT(A) at para 9 of the impugned order that the assessee did not enclose copy of notice issued by the AO u/s 274 of the Act, was factually incorrect as the assessee filed his written submissions before the ld. CIT(A) and the copy of the notice was duly enclosed at page no. 1 with the written submission. It was further submitted that not mentioning of the specific charge in the notice u/s 274 of the Act was not a mere irregularity rather it was nullity. Our attention was drawn towards page no. 1 of the assesseeôs paper book which is the copy of the show-cause notice dated 20.01.2016 issued u/s 274 of the Act. In the said notice, the AO has not mentioned the specific charge on the basis of which the penalty proceeding u/s 271(1)(c) of the Act were initiated i.e. as to whether the assessee

concealed the particulars of income or furnished inaccurate particulars of income. It was submitted that an identical issue has been decided by the Hon'ble Karnataka High Court in the case of CIT Vs SSA's Emerald Meadowas in ITA No. 380 of 2015 vide order dated 23.11.2015 wherein the Hon'ble Karnataka High Court followed its own decision in the case of CIT Vs Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 wherein a view was taken that imposing of penalty u/s 271(1)(c) of the Act was bad in law and invalid for the reason that show-cause notice u/s 274 of the Act did not specify the charge against the assessee as to whether it was for concealment of particulars of income or furnishing of inaccurate particulars of income. It was also pointed out that against the said decision of the Hon'ble Karnataka High Court, the revenue preferred an appeal in SLP in CC No. 11485 of 2016 and the Hon'ble Supreme Court vide order dated 05.08.2016 dismissed the SLP preferred by the department. The reliance was also placed on the following case laws:

- *CIT Vs Sh. Samson Perinchery in ITA No. 1154 of 2014, order dated 05.01.2017 (Bom.)*
- *PCIT Vs Smt. Baisetty Revathi in ITA No. 684/2016, order dated 13.07.2017 (Telangana & AP)*
- *Sachin Arora Vs ITO in ITA No. 118/Agra/2015, order dated 19.12.2017 (ITAT Agra)*
- *Yum Restaurants (India) Pvt. Ltd. (2017) 88 Taxmann.com 914 (Del.-Trib.)*
- *Aditya Chemicals Ltd. Vs ITO in ITA No. 5006/Del./2013, order dated 21.11.2017 (ITAT Del.)*

7. It was also submitted that no penalty u/s 271(1)(c) of the Act was leviable when the addition was made by rejecting the claim of the assessee. The reliance was placed on the judgment of the Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. reported at 322 ITR 158 (SC).

8. In his rival submissions, the ld. Sr. DR strongly supported the impugned order passed by the ld. CIT(A) and also submitted that the assessee did not raise this issue earlier. He prayed to confirm the action of the ld. CIT(A) in sustaining the penalty levied by the AO u/s 271(1)(c) of the Act.

9. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the AO while issuing the notice u/s 274 of the Act for levying the penalty u/s 271(1)(c) of the Act did not mention any specific charge which is evident from the said notice dated 20.01.2016 (copy of which is placed at page no. 1 of the assesseeôs compilation). The AO mentioned in the said notice as under:

> *"You have concealed the particulars of your income or furnished inaccurate particulars of such income."*

10. From the above notings, it is clear that the AO had not mentioned any specific charge i.e. as to whether the penalty u/s 271(1)(c) of the Act was initiated for concealment of income or furnishing of inaccurate of particulars of income. An identical issue has been decided by the ITAT Delhi Bench óAô, New Delhi in ITA No. 5006/Del/2015 for the assessment year 1997-98 in the case of Aditya Chemicals Ltd., South Extn., Part-I, New Delhi Vs ITO, Company Ward-1(2), New Delhi wherein vide over dated 21.11.2017, it has been held in paras 6 to 14 as under:

> *"6. We have carefully considered all the submissions. With the assistance of both the parties we examined jurisdictional notice issued by the AO u/s 274 dated 26.03.2002. It is noticed from the perusal of said notice that the applicable clause pre-printed on the notice for levy of penalty was* ***not*** *ticked and it reads as under:*
>
> > *"have concealed the particulars of your income or……. furnished inaccurate particulars of such income."*

7. On the contrary, some other clause has been ticked which seems to be some other default and which has nothing to do with levy of penalty u/s 271(1)(c), which reads as under:

> *"have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income-tax Act,1922 or under section 142(1)/143(2) of the Income-tax Act,1961."*

Thus from the above, it is clear that as far as jurisdictional notice is considered, no clear charge has been levied at all that whether a default committed by assessee was on account of concealment of income or it was on account of furnishing of inaccurate particulars of income by the assessee. Our attention was also drawn upon the assessment order dated 26.03.2002 wherein AO has simply mentioned that:

> *"..... Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 has already been initiated..."*
> *Similarly in the penalty order also AO has concluded penalty order by stating as under:*
>
> *It is established beyond doubt that the assessee has concealed the particulars of its income/furnished inaccurate particulars of income to the extent of Rs. 35,12,272/- (Rs. 21,12,272 + Rs. 14,00,000/-). It is therefore liable to be penalized.*

8. Thus from the above, it is clear that no proper charge has been levied by AO at any of the aforesaid three stages i.e. assessment order, jurisdictional penalty notice or the penalty order. Under the facts and circumstances of the case, the judgment of Hon'ble Supreme Court in the case of CIT & Anr. vs. SSA's Emerald Meadows in SLP No. 11485/2016 dated 05.08.2016, is squarely applicable wherein Hon'ble Supreme Court has affirmed the view taken by Hon'ble High Court of Karnataka in its order dated 23.11.2015 which in turn relied upon the another judgment of Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory in 359 ITR 565 wherein it was held that jurisdictional notice issued by AO u/s 274 read with section 271(1)(c) of the Act was bad in law as it did not specify that in which limb of section 271(1)(c) of the Act, the penalty proceedings have

been initiated i.e. whether for concealment of income or furnishing of inaccurate particulars of income. Thus, the mandate of the law as declared by Hon'ble Supreme Court is very clear and we are bound by it.

9. It is further brought to our notice that Hon'ble Bombay High Court in the case of CIT vs. Shri Samson Perinchery in ITA No. 1154 dated 05.01.2017 has followed the view taken by Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory (supra) and dismissed the argument of the revenue that there is no difference between furnishing of inaccurate particulars or concealment of income. It is further noted by us that above judgment of Hon'ble Bombay High Court also took support of the judgment of Hon'ble Supreme Court in the case of ***Ashok Pai vs. CIT 292 ITR 11(SC)*** *wherein it was observed that concealment of income and furnishing of inaccurate particulars of income in section 271(1)(c) of the Act, carry different meanings/connotations. Therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under section 271(1)(c) of the Act, for initiation of penalty proceedings will not warrant/permit penalty being imposed for the other breach. This is more so, as an assessee would respond to the ground on which the penalty has been initiated/notice issued. It must, therefore, follow that the order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated, and it cannot be on a fresh ground of which the assessee has no notice.*

10. During the course of hearing, our attention was drawn by the Ld. Counsel of assessee upon the reply filed by the assessee dated 27.02.2012 to the penalty notice of the Ld. AO wherein objection was raised to the AO that assumption of jurisdiction was bad as there was no belief of the AO in the assessment order or in the penalty notice as to whether the penalty proceedings were initiated by the AO for concealment of income or furnishing of inaccurate particulars of income by assessee. Relevant portion of the reply is reproduced below for ready reference:

> *"Our above named client is in receipt of your letter dated F. No. ITO/W-1(2)/Aditya/2011-12/780 dated 7.2.2012 for the above assessment year to submit evidence / documents in connection with*

the above proceedings. As has been informed to us by our above named client, no notice u/s 271(1)(C) was issued to the assessee company for the above assessment year. The only notice issued was for penalty u/s 271(1)(b) dated 26.3.2002 (Refer PB 1-2), with reference to assessment order passed dated 26.3.2002 (Refer PB 3-8), which refers to penalty proceedings initiated u/s 271(1)(c), but there is no mention for issuance of notice u/s 271(1)(b). Further, there is no mention or belief of the Ld. AO in the Assessment order passed, as to whether the penalty proceedings were initiated by him for concealment of income by the assessee or for furnishing inaccurate particulars of income by the assessee. In view of the above facts, the proceedings initiated by the Ld. AO u/s 271(1)(c) are void ab initio, contrary to facts of the case, bad in law, and as such proceedings initiated may kindly be dropped on these facts itself."

10. Thus, from the perusal of above, it is clear that in the case before us the AO made a serious lapse in not fixing the charge clearly while assuming jurisdiction to levy penalty and whether at the stage of leaving the penalty.

11. On the other hand, it is brought to our notice by the opposite party that judgment of Hon'ble Bombay High Court (Nagpur Bench) in the case of Maharaj Garage & Co. (supra) has not considered the judgment of Hon'ble Supreme Court in the case of CIT vs. SSA's Emerald Meadows (supra). Further as discussed above, Hon'ble Bombay High Court has itself in the case of CIT vs. Shri Samson Perinchery (supra) has followed the view taken by Hon'ble Supreme Court in the case of CIT vs. M/s SSA's Emerald Meadows and CIT vs. Ashok Pai (supra). It is further brought to our notice that perusal of judgment shows that in the four questions of law determined by the Hon'ble High Court, the issue before us in this case was not involved in any of these questions. Further, Hon'ble High Court has made observations in para 15 of the judgment on the basis of specific facts of the said case to hold that the said assessee had sufficient notice of action of imposing penalty. Thus, the said judgment is not applicable on the facts and issue involved before us and more so when the judgment of Hon'ble Apex Court in the case of SSA's Emerald Meadows, (supra) and Ashok Pai, (supra) is directly applicable on the issue involved before us.

12. It is further noted by us that the similar view has been followed recently by Hon'ble Andhra Pradesh High Court in the case of Pr. CIT vs. Smt. Baisetty Revathi dated 13.07.2017 in ITA No. 684 of 2016, wherein Hon'ble High Court observed inter alia as under:

> *"On principle, when penalty proceedings are sought to be initiated by the revenue under section 271(1)(c) of the Act of 1961, the specific ground which forms the foundation therefore has to be spelt out in clear term. Otherwise, an assessee would not have proper opportunity to put forth his defence. When the proceedings are penal in nature, resulting in imposition of penalty ranging from 100% to 300% of the tax liability, the charge must be unequivocal and unambiguous. When the charge is either concealment of particulars of income or furnishing of inaccurate particulars thereof, the revenue must specify as to which one of the two is sought to be pressed into service and cannot be permitted to club both by interjecting an or between the two, as in the present case. This ambiguity in the show-cause notice is further compounded presently by the confused finding of the Assessing Officer that he was satisfied that the assessee was guilty or both.*

13. Lastly, we shall also deal with the other argument of Ld. Senior DR that penalty should be upheld for the reason that penalty was levied on both the grounds i.e. as per the AO the assessee had made concealment of income and also furnished inaccurate particulars of income. We find that this argument of revenue is also not sustainable. It is settled law that penalty cannot be levied for twin charges. Penalty cannot be levied for two mutually exclusive situations. The default for concealment of particulars of income or furnishing of inaccurate particulars are two mutually exclusive situations. The position of law in this is well settled and reference in this regard may be made to judgments of Hon'ble Gujarat High Court in the case of New Sorathia Engg Co. vs. CIT in 282 ITR 642, CIT vs. Manu Engg. Works in 122 ITR 306 and CIT vs. Lakhdhir Lalji in 85 ITR 77.

14. This view has been again reiterated also by Hon'ble Andhra Pradesh High Court in the case of Pr. CIT vs. Smt. Baisetty Revathi (supra). Thus viewed from any angle we find that levy of penalty in this case is not justified and the impugned penalty order is illegal.

Therefore, we have no other option but to delete the same. Thus, the penalty of Rs. 15,20,000/- is hereby directed to deleted. Since, penalty is deleted on jurisdictional ground, we are not deciding other issues raised by assessee. As a result, the grounds of appeal raised by the assessee are allowed."

11. Since, the facts of the assesseeôs case are identical to the facts involved in the aforesaid referred to case of M/s Aditya Chemicals Ltd., New Delhi Vs ITO, Company Ward-1(2), New Delhi. I, therefore, by respectfully following the order dated 21.11.2017 in ITA No. 5006/Del/2013 for the assessment year 1997-98, delete the penalty sustained by the ld. CIT(A).

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

(Order Pronounced in the Court on 28/11/2018)

Sd/-
(N. K. Saini)
VICE PRESIDENT

Dated: 28/11/2018
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR