

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI L.P. SAHU, A.M.

ITA.No.3539 & 3540/Del./2015
Assessment Years 2010-2011 and 2011-2012

Shri Amardeep Dalal, A-3/502, Block-4, Kailash Dham Apartment, Sector- 50, Noida – 201 301 Uttar Pradesh.	vs.	The ACIT, Central Circle-17, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, Advocate,
For Revenue :	Shri Amit Katoch, Sr.D.R.

Date of Hearing :	06.02.2019
Date of Pronouncement :	06.02.2019

ORDER

PER BHAVNESH SAINI, J.M.

Both the appeals by Assessee are directed against the Common Order of the Ld. CIT(A)-XXVI, New Delhi, Dated 31.03.2015 for the A.Ys. 2010-2011 and 2011-2012, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. We have heard the Learned Representatives of both the parties and perused the material available on record.

3. Learned Counsel for the Assessee submitted that in A.Y. 2010-2011, the A.O. has issued show cause notice Dated 28.08.2014 before levy of the penalty in which the A.O. has mentioned as under :

“Have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2, 3, 4 and 5.”

3.1. He has submitted that similarly in A.Y. 2011-2012, A.O. has issued show cause notice Dated 26.03.2014 before levy of the penalty in which the A.O. has mentioned as under :

“Have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2, 3, 4 and 5. (Penalty u/s.271(1)(c)”

3.2. Learned Counsel for the Assessee, therefore, submitted that notices issued before levy of the penalty in

the above appeals are bad in law as the same did not provide under which limb of Section 271(1)(c) of the I.T. Act, the penalty proceedings have been initiated. Therefore, the issue is covered by the Judgment of Hon'ble Karnataka High Court in the case of CIT vs. M/s. SSAs Emerald Meadows 73 taxmann.com 241. This decision is confirmed by the Hon'ble Supreme Court reported in 73 taxmann.com 248.

4. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

5. After considering the rival submissions, we are of the view that penalty is not leviable in the matter. The A.O. issued show cause notices Dated 28.08.2014 (A.Y. 2-010-2011) Dated 26.03.2014 (A.Y. 2011-2012) before levy of the penalty against the assessee in which the A.O. has recorded as under :

“Have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2, 3, 4 and 5.”

5.1. These facts, therefore, clearly show that notices issued by the A.O. for levy of penalty under section 271(1)(c) of the I.T. Act, 1961, to be bad in Law as it did not specify in which limb of Section 271(1)(c) of the I.T. Act, 1961, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing inaccurate particulars of income. The entire penalty proceedings are, therefore, vitiated and no penalty is leviable. On this score itself similar view is taken by Hon'ble Karnataka High Court in the case of CIT vs. M/s. SSAs Emerald Meadows (supra) which has been confirmed by the Hon'ble Supreme Court reported in 73 taxmann.com 248. Further, the Coordinate Bench of the ITAT, Delhi-A Bench in the case of Shri Lakshya Seth, Delhi vs. ITO, Ward-19(3), New Delhi in ITA.No.852/Del./2016 vide Order Dated 16.05.2018, by following the aforesaid decisions of Hon'ble Karnataka High Court and Hon'ble Supreme Court, set aside the Order of the authorities below and cancelled the penalty. Respectfully following the decision of the Coordinate Bench of the Tribunal (supra) and Judgment of

Hon'ble Karnataka High Court in the case CIT vs. M/s. SSAs Emerald Meadows (supra) which has been confirmed by the Hon'ble Supreme Court reported in 73 taxmann.com 248 (supra), we set aside the orders of the authorities below and cancel the penalty proceedings.

5. In the result, appeals of assessee are allowed.

Order pronounced in the open Court.

Sd/-
(LP SAHU)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 06th February, 2019

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.