

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

**Before Sh. N. S. Saini, Accountant Member**

**ITA No. 4327/Del/2018 : Asstt. Year : 2007-08**

Alfa Systems & Services, E-19C, Sector-8, Noida-201301	Vs	Income Tax Officer, Ward-1(1), Noida
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AALFA3938L</b>		

**Assessee by : None**

**Revenue by : Sh. S. L. Anuragi, Sr. DR**

<b>Date of Hearing: 04.02.2019</b>	<b>Date of Pronouncement: 06.02.2019</b>
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**ORDER**

This is an appeal filed by the assessee against the order of CIT(A)-I, Noida dated 28.10.2016.

2. None appeared on behalf of the assessee when the case was called for hearing and neither any adjournment application was filed. The Bench was of the view that the appeal of the assessee can be disposed off in the absence of the assessee. Therefore, the appeal was heard *ex-parte* qua the assessee and disposed off considering the submission of the Id. Departmental Representative.

3. The DR relied on the order of the CIT(A).

4. The sole issue in this appeal is that the CIT(A) erred in levying penalty of Rs.7,98,557/- u/s 271(1)(c) of the Income Tax Act, 1961 on the enhanced income.

5. The brief facts of the case are that the Assessing Officer on enquiry found that appellant has received total credit of Rs.56,18,767/- from M/s Carrier Aircon Ltd. and had disclosed Rs.38,26,465/- only against the same. Therefore, the Assessing Officer made addition of difference amount of Rs.17,92,302/- as unaccounted income of the assessee.

6. On appeal, before the CIT(A), the assessee submitted that M/s Carrier Aircon Ltd. maintained its account on single entry system and the appellant had two set of transaction with that company one being the purchase of material for its job work and second rendering after sales services to customers of that company and as both were accounted for in the same account of that company, the same got mixed up leading to the adverse conclusion drawn by the Assessing Officer. The appellant submitted its account and also produced the reconciliation statements for both set of works done by it. The CIT(A) observed that from a perusal of the same, it is seen that the appellant claim is in order. He observed that the assessee has an amount of Rs.17,19,322/- as income against service charges against amount of Rs.25,17,879/-. Hence, the AO considered credit received by the appellant against the service charges less by Rs.7,98,557 than the actual amount. The issue was confronted to the appellant but could not reconcile the same. Therefore, the CIT(A) made addition of Rs.7,98,557/- to the income of the assessee.

7. Thereafter, the CIT(A) initiated penalty proceedings u/s 271(1)(c) of the Act qua the concealed amount of service charges for furnishing inaccurate particulars of its income as well as concealing the particulars of income and issued notice for the same.

8. Further, in the penalty order passed u/s 271(1)(c) of the Act on 28.04.2017, the CIT(A) has observed as under:

*"12. In the facts and circumstances of the case, the appellant is held to have furnished inaccurate particulars of its income of Rs.7,98,557/- and has also concealed the particulars of its income to that extent which is covered under the provisions of section 271(1)(c) of I.T. Act, 1961. Consequently, a penalty @ 100% against the tax effect on the concealed income of Rs.7,98,557/- is ordered to be imposed. The Id. AO is directed to issue the demand notice as per rules and enforce the recovery of penalty imposed."*

9. Hon'ble Apex Court vide judgment in case of *M/s. SSA's Emerald Meadows, (2016) 73 taxmann.com 248(SC)* dismissed the Special Leave Petition filed by the Revenue against the judgment rendered by Hon'ble High Court of Karnataka whereby identical issue was decided in favour of the assessee. Operative part of the judgment in case of *M/s. SSA's Emerald Meadows* (supra) decided by Hon'ble High Court of Karnataka is reproduced below:

*"2. This appeal has been filed raising the following substantial questions of law:*

*(1) Whether, omission of assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?*

*(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.s. 271(1)(c) is valid in law and not invalid in spite of the amendment of Section 271(1 B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?*

*(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued, under Section 274 without taking into consideration the*

*assessment order when the assessing officer has specified that the assessee has concealed particulars of income?*

*3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') to be bad in law as it did not specify which limb of Section 271(1)(c) 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 or INCOME Tax -vs- manjunatha Cotton and Ginning Factory (2013) 359 ITR 565.]*

*4. In our view, 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 in this appeal for determination by this Court, the appeal is accordingly dismissed."*

10. Bare perusal of the order of the CIT(A) u/s 271(1)(c) apparently goes to prove that the CIT(A) levied penalty on the ground that assessee has furnished inaccurate particulars of its income of Rs.7,98,557/- and has also concealed the particulars of its income to that extent which is covered under the provisions of Section 271(1)(c) of the Income Tax Act, 1961, hence, the penalty order is bad in law in view of the above cited discussion.

11. The penalty provisions of section 271(1)(c) of the Act are attracted where the assessee has concealed the particulars of income or furnished inaccurate particulars of such income. It is also a well-accepted proposition that the aforesaid two limbs of section 271(1)(c) of the Act carry different meanings. Therefore, it was imperative for the CIT(A) to strike- off the irrelevant limb so as to make the assessee aware as to what is the charge made against him so that he can respond accordingly. The

Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar) observed that the levy of penalty has to be clear as to the limb under which it is being levied. As per Hon'ble High Court, where the CIT(A) proposed to invoke first limb being concealment, then the notice has to be appropriately marked. The Hon'ble High Court held that the standard proforma of notice under section 274 of the Act without striking of the irrelevant clauses would lead to an inference of non-application of mind by the Assessing Officer. The Hon'ble Supreme Court in the case of Dilip N. Shroff vs. JCIT, 291 ITR 519(SC) has also noticed that where the CIT(A) issues notice under section 274 of the Act in the standard proforma and the inappropriate words are not deleted, the same would postulate that the CIT(A) was not sure as to whether he was to proceed on the basis that the assessee had concealed the particulars of his income or furnished inaccurate particulars of income. According to the Hon'ble Supreme Court, in such a situation, levy of penalty suffers from non-application of mind. In the background of the aforesaid legal position and, having regard to the manner in which the CIT(A) has issued notice under section 274 r.w.s. 271(1)(c) of the Act dated 28.10.2016 without striking off the irrelevant words, the penalty proceedings show an non-application of mind by the CIT(A) and is, thus, unsustainable.

12. The facts of the present appeal are identical to the facts of the case before the Hon'ble Karnataka High Court in the case of SSA's. Emerald Meadows (supra). In the instant case the CIT(A) while levying penalty u/s 271(1)(c) has observed that the assessee has concealed the particulars of his income and has also furnished inaccurate particulars thereof. Thus, he is not specific as to whether the penalty is levied for concealment of income or for furnishing inaccurate particulars of income. Hence, respectfully following the quoted decision of Hon'ble Karnataka High Court,

we cancel the order of the CIT(A) levying penalty of Rs.7,98,557/- and allow the ground of appeal of the assessee.

13. In the result, the appeal of the assessee is allowed.  
(Order Pronounced in the Open Court on 06/02/2019).

**Sd/-**  
**(N. S. Saini)**  
**Accountant Member**

**Dated: 06/02/2019**

**\*Subodh\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**