

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.4937/Del./2018
Assessment Year 2013-2014

M/s. Harisons Diamonds Pvt. Ltd., 2606/4, Shop No.101, 1 st Floor, Soliator Plaza, Karol Bagh, New Delhi – 110 005. PAN AACCH1163N	vs.	The DCIT, Circle-11(1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Pranshu Singhal, FCA.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	11.02.2019
Date of Pronouncement :	12.02.2019

ORDER

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-35, New Delhi, Dated 3rd August, 2017, for the A.Y. 2013-14, challenging the levy of penalty under section 271(1)(c) of the Income Tax Act, 1961.

2. Briefly the facts of the case are that assessee company filed return of income declaring income of Rs.35,75,310/-. The case was selected for scrutiny and assessment under section 143(3) of the I.T. Act, 1961 was

completed. The A.O. made the following additions (i) Disallowance of interest paid on car loan at Rs.36,674/- (ii) Disallowance of car running and maintenance expenses at Rs.2,63,913/- and (iii) Disallowance of depreciation Rs.91,514/-. The A.O. noted that these expenses were claimed on the car which is purchased in the name of the Director. The assessee at the assessment stage agreed for the addition. Therefore, A.O. issued show cause notice before levy of the penalty and vide separate Order levied the penalty under section 271(1)(c) of the Income Tax Act, 1961, which is confirmed by the Ld. CIT(A).

3. Learned Counsel for the Assessee submitted that the car was purchased in the name of the Director and later on the business of the individual was taken-over by the Company on Incorporation of Company. Though car has stood in the name of the individual, but, in fact, it was used by the Company. He has submitted that A.O. has issued show cause notice dated 31st December 2015, prior to levy of the penalty in which A.O. has mentioned as follows :

“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 notice is bad in law because it did not specify under which limb of Section 271(1)(c) of the Income Tax Act, 1961, the penalty was proposed to be levied. Therefore, penalty is not leviable.

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

5. After considering the rival submissions, I am of the view that the issue is covered in favour of the assessee by the Order of the ITAT, Delhi Bench in the case of M/s. M.M. Industries, NIT Faridabad vs., ITO, Ward-II(4), Faridabad in ITA.No.1301/Del./2016, Dated 31.01.2019, in which on identical facts, it was held as under

*“IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES “G” : DELHI*

BEFORE SHRI BHAVNESH SAINI, J.M. & SHRI O.P. KANT, A.M.

*ITA.No.1301/Del./2016
Assessment Year 2007-2008*

<i>M/s. M.M. Industries, NIT Faridabad. PAN AALFM2320G C/o. RRA Taxindia, D-28, South Extension, Part-1, New Delhi-110049.</i>	<i>Vs</i>	<i>Income Tax Officer, Ward-II(4), Faridabad.</i>
<i>(Appellant)</i>		<i>(Respondent)</i>

<i>For Assessee :</i>	<i>Shri Somil Aggarwal, Advocate.</i>
<i>For Revenue :</i>	<i>Shri N.K. Bansal, Sr. D.R.</i>

<i>Date of Hearing :</i>	<i>30.01.2019</i>
<i>Date of Pronouncement :</i>	<i>31.01.2019</i>

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of the Ld. CIT(A), Faridabad, Dated 28.01.2016, for the A.Y. 2007-2008 challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. *Briefly the facts of the case are that assessee is a firm and filed return of income declaring income of Rs.1,40,030/-. The A.O. examining the books of account and details, made certain additions against the assessee in a sum of Rs.16,03,830/- and assessed the total income at Rs.17,43,860/-. The A.O. in the assessment order noted that penalty proceedings under*

section 271(1)(c) of the I.T. Act, 1961, has been initiated separately for furnishing inaccurate particulars and concealing the income. The A.O. vide separate Order levied the penalty under section 271(1)(c) of the I.T. Act, 1961 on the concealed income. The Tribunal vide Order dated 18.03.2015 allowed the appeal of assessee for statistical purposes and remit the matter back to the Ld. CIT(A) for adjudication. The Ld. CIT(A) noted that he has allowed part relief to the assessee vide his Order dated 27.02.2016 and on the balance amount penalty was confirmed.

3. *Learned Counsel for the Assessee, at the outset, submitted that the A.O. has issued show cause notice under section 274 r.w.s.271 of the I.T. Act Dated 29.12.2009 before levy of the penalty in which the A.O. has mentioned as follows:*

*“have concealed the particulars of your income or -----
furnished inaccurate particulars of such income.”*

3.1. *He has submitted that A.O. has not specified in which limb of Section 271(1)(c) of the Act, the penalty have been levied. 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, which is confirmed by the Hon'ble Supreme Court reported in 73 taxmann.com 248.*

4. *The Ld. D.R. on the other hand, submitted that the assessee did not raise this issue specifically before the authorities below. Therefore, new point should not be allowed to be raised at this stage.*

5. *After considering the rival submissions, we are of the view that penalty is not leviable in the matter. The Hon'ble Karnataka High Court in the case of CIT vs. M/s. SSAs Emerald Meadows 73 taxmann.com 241 confirmed the Order of the Tribunal in which the Tribunal has allowed the appeal filed by assessee holding that notice issued by the A.O. under section 274 r.w.s. 271(1)(c) of the I.T. Act, 1961, to be bad in Law and 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 decision of Hon'ble Karnataka High Court in the case of CIT vs. M/s. SSAs Emerald Meadows (supra) have been confirmed by the Hon'ble Supreme Court reported in 73 taxmann.com 248 by dismissing the SLP of the Department. In the present case, the A.O. issued show cause notice dated 29.12.2009 which is also mentioned in the penalty order in which A.O. has put the column blank which did not specify under 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 inaccurate particulars of income. Even in the assessment order A.O. did not mention as to under which limb of Section 271(1)(c) of the Act, the penalty have been initiated against the assessee as noted above. Therefore, the show cause notice for levy of the penalty itself is invalid and bad in law and as such the

resultant proceedings have been vitiated. Once the assessee challenged the assumption of jurisdiction of the A.O. it would include the validity of the show cause notice which is mandatory before levy of the penalty. Since the notice itself is not legal, therefore, no penalty could be levied against the assessee. We, accordingly, set aside the Orders of the authorities below and cancel the penalty.

6. *In the result, appeal of assessee is allowed”.*

5.1. Following the above Order of the Coordinate Bench of the Tribunal, I set aside the orders of the authorities below and cancel the penalty.

6. In the result appeal of the Assessee is allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 12th February, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "SMC" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.