

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 3705/DEL/2014 (A.Y 1995-96)

The Bank of Tokyo Mitsubishi, UFJ Ltd. (Earlier known as The Bank of Tokyo Mitsubishi Ltd.) Jeevan Vihar Building, 3, Parliament Street, New Delhi AABCT3880D (APPELLANT)	Vs	DDIT Circle-1(1), International Taxation New Delhi (RESPONDENT)
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ITA No. 3757/DEL/2014 (A.Y 1995-96)

DDIT Circle-1(1), International Taxation New Delhi (APPELLANT)	Vs	The Bank of Tokyo Mitsubishi, UFJ Ltd. (Earlier known as The Bank of Tokyo Mitsubishi Ltd.) Jeevan Vihar Building, 3, Parliament Street, New Delhi AABCT3880D (RESPONDENT)
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Appellant by	Mr. Percy Pardiwala, Adv
Respondent by	Mr. G. K. Dhall, CIT DR (Intl)

Date of Hearing	18.03.2019
Date of Pronouncement	27.03.2019

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee as well as by the Revenue against the order dated 18/03/2014 passed by CIT(A)-XXV, New Delhi for Assessment Year 1995-96.

2. The grounds of appeal are as under:-

ITA No. 3705/DEL/2014

ADDITIONAL GROUNDS

1A. *“That the notice issued u/s 274 read with u/s 271(1)(c) of the Act dated September, 11, 1998 does not mention the specific charge for which penalty proceedings are initiated hence the said notice and the order passed u/s 271(1)(c) of the Act are illegal, bad in law and without jurisdiction.”*

GROUND OF APPEAL

The Appellant respectfully submits:

1. *That on the facts and in the circumstances of the case, the Hon’ble CIT(A) erred in confirming the action of the learned Assessing Officer (Ld. AO) in levying penalties under section 271(1)(c) of the Act for the alleged concealment of particulars of income on the part of the Appellant with respect to each of the issues referred to hereunder, where the penalties had been calculated with reference to 100% of the amounts of taxes allegedly sought to be evaded with respect to each of the said issues -*

- (a) *Disallowance made on account of expenditures incurred in respect of premises provided to the General Managers of the Appellant*
- (b) *Disallowance made with respect to the expenditures allegedly incurred by the Appellant on premises provided to its senior executives.*
- (c) *Disallowance of the interest paid to head office and foreign branches of the bank situated outside India.*

2. *That on the facts and in the circumstances of the case and in law, the Hon’ble CIT(A) failed to appreciate that the Appellant is neither guilty of concealment of income nor furnishing of inaccurate particulars of income with respect to any of the three issues referred to in ground no. (1) above and accordingly the Hon’ble CIT(A) erred in confirming the action of the Ld. AO in levying penalty under section 271 (1)(c) of the Act with respect to each of the*

said issues.

3. That on the facts and circumstances of the case and in law, the Ld. AO erred in levying penalty and the Hon'ble CIT (A) erred in confirming the same, completely ignoring that no satisfaction has been recorded in the assessment order that the Appellant had concealed its income or furnished inaccurate particulars of its income”.

4. General

(a) Each of the above ground is independent and without prejudice to the other grounds of appeal preferred by the appellant.”

ITA No. 3757/DEL/2014

1. On the facts and in the circumstances of the case and law, Ld.CIT(A) has erred in deleting the penalty imposed by the A.O u/s 271(1)(c) to the extent of Rs.1,60,47,526/-.”

3. The assessee is a foreign banking company and non-resident having its head office at Tokyo, Japan. The assessee Company has its branches in India at Delhi, Bombay, Calcutta etc. These branches of the assessee constitute a Permanent Establishment (PE) of the assessee in India within the meaning of Article 5 of the Indo-Japan Double Taxation Avoidance Agreement (DTAA). Total income of the assessee is taxable in India at the income tax rate prescribed by the Annual Finance Act for a Company other than a domestic company which is 55% for the Assessment Year 1995-96 and no surcharge. The return of income for the Assessment Year 1995-96 was filed on 28/11/1995 declaring total income of Rs.64,58,42,380/-. Order u/s 143(3) of the Act was passed on 11/9/1998 wherein total income was determined at

Rs.72,70,60,080/-. The appeal of the assessee against the Assessment Order was disposed off by the CIT(A) vide order dated 17/12/1999. The assessee filed appeal before the Tribunal and Tribunal vide order dated 3/4/2003 and 13/1/2003 passed the relevant orders. In the meantime, the penalty proceedings u/s 271(1)(c) was initiated. The assessment order under which limb of Section 271(1)(c) the penalty is initiated was not specified. This objection was raised during the penalty proceedings by the assessee. The Assessing Officer passed penalty order thereby imposing penalty of Rs. 2,03,45,865/- u/s 271(1)(c) of the Act.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the inappropriate words in the notice issued u/s 274 read with Section 271 have not been struck off, therefore, it was not understood as to under which limb of provisions of Section 271(1)(c) of the Act, the Assessing Officer levied penalty. The show cause notice issued u/s 274 did not specify the charge against the assessee as to whether it was for concealing the particulars of income or for furnishing of inaccurate particulars of income. Therefore, the penalty order passed u/s 271(1)(c) in pursuance to the said notice was submitted to be set aside by the Ld. AR. The Ld. AR also relied upon the decision of the assessee's own case by the Tribunal in ITA No. 6093 & 6614/Mum/ 2003 order dated 6/12/2018 and submitted that the

appeal of the assessee was allowed and the appeal of the Revenue was dismissed.

6. The Ld. DR relied upon the penalty order and the order of the CIT(A). The Ld. AR during the course of hearing relied upon the decision of the Hon'ble Madras High Court in case of M/s Sundaram Finance Ltd. Vs. ACIT 2018-TIOL-813-H.C-Mad IT.

7. We have heard both the parties and perused the material available on record. In the show cause notice there was no specific charges as relates to concealment of income or furnishing of inaccurate particulars of income as relates to disallowance made on account of expenditure incurred in respect of premises provided to the General Managers of the assessee, disallowance made with the expenditures allegedly incurred by the assessee on premises provided to its senior executives and disallowance of the interest paid to head office and foreign branches of bank situated outside India. During the regular assessment proceedings, the assessee has given all the details to the Assessing Officer. Therefore, there was no concealment on the part of the assessee. Thus, the authorities cited by the Ld. AR are applicable in the present case. Thus, Section 271(1)(c) of the Act was not correctly invoked by the Assessing Officer. The CIT(A) also overlooked the actual intention of the penalty proceedings which clearly set out that when there is inaccurate particulars or concealment on part of the assessee, then the same should be proceeded. But in the present case, the assessee has disclosed all the factual aspects before the Assessing Officer which cannot be stated that there was concealment of particulars of income or the assessee furnished inaccurate particulars of income. We find the only issue to be decided in the grounds of appeal is regarding the sustainable of penalty levied u/s 271(1)(c) when the inappropriate words in the notice issued u/s 274 r.w.s. 271 of the Act have not been struck off. A perusal of the notice issued u/s 274 r.w.s. 271 dated 28.11.2011 shows that the

inappropriate words in the said notice have not been struck off and it is a printed notice. Even the last line of the said notice only speaks of Section 271 and does not even mention of section 271(1)(c) of the I.T. Act. We find an identical issue had come up before the Co-ordinate Bench of the Tribunal in the case of Sahiwal Investment & Trading Co. vs. ITO vide ITA No.4913/Del/2015 for assessment year 2006-07 order dated 18.07.2018 to which both of us parties. We find the Tribunal in the said decision while allowing the additional ground filed by the assessee has decided the issue in favour of the assessee by observing as under :-

"12. Additional Ground No. (ii) is relating to absence of specific charge pointing out in the notice. It is pertinent to note here that the penalty order is based on furnishing of inaccurate particulars but the notice is not specifying exactly on which limb the penalty u/s 271(1)(c) has been initiated. From the notice dated 30.06.2013 produced by the Ld. AR during the hearing, it can be seen that the Assessing Officer was not sure under which limb of provisions of Section 271 of the Income Tax Act, 1961, the assessee is liable for penalty. The issue is squarely covered by the decision of the Hon'ble Supreme Court in case of M/s SSA' Emerald Meadows. The extract of the decision of the Hon'ble Karnataka High Court in M/s. SSA' Emerald Meadows are as under which was confirmed by the Hon'ble Apex Court:

"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 ITA No. 4913/Del/2015 decision of the Division Bench of this Court rendered in the case of COMMISSIONER OF 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."

Thus, Additional Ground No. (ii) of the assessee's appeal is allowed. Since the inception of the notice issued u/s 271(1)(c) has become null and void, there is no need to comment on merit of the case. The Penalty u/s 271(1)(c) of the Act is quashed."

Since in the instant case also the inappropriate words in the penalty notice has not been struck off and the notice does not specify as to under which limb of the provisions, the penalty u/s 271(1)(c) has been initiated, therefore, we are of the considered opinion that the penalty levied u/s 271(1)(c) is not sustainable and has to be deleted. Although the Ld. DR has relied on various decisions to the proposition that mere non-striking off of the inappropriate words will not invalidate the penalty proceedings, however, all these decisions are of non-jurisdictional High Court decisions. The decision of the Hon'ble Madras High Court relied on by the Ld. DR is not applicable in the present case as the decision of the Hon'ble Karnataka High Court in the case of SSA'S Emerald Meadows (supra) where the SLP filed by the Revenue has been dismissed. Since there is no decision of the Jurisdictional High Court on this issue, therefore, we find merit in the argument of the Ld. AR that if two views are available on a particular issue, the view which is favourable to the assessee has to be followed in the light of the decision of the Hon'ble Supreme Court in the case of Vegetable Products Limited (supra). We, therefore, set-aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied.

8. In result, the appeal of the assessee is allowed and appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 27th MARCH, 2019.

**Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 27/03/2019

R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	18.03.2019
Date on which the typed draft is placed before the dictating Member	19.03.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	27.03.2019
Date on which the final order is uploaded on the website of ITAT	27.03.2019
Date on which the file goes to the Bench Clerk	27.03.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

