

IN THE INCOME TAX APPELATE TRIBUNAL

DELHI BENCH "A": NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 7196/Del/2017

A.Y. : 2011-12

ATRIA PARTNER,
301-3-3, MERCHANTILE HOUSE,
15-KG MARG,
NEW DELHI – 110 001
(PAN: AAHFA1305P)
(Appellant)

Vs. ACIT, CIRCLE 52(1),
NEW DELHI

(Respondent)

Assessee by : Sh. Amol Sinha, Adv. & Sh. Ashvini
Kumar, Adv.
Department by : Smt. Naina Soin Kapil, Sr. DR.

ORDER

PER H.S. SIDHU, JM

This appeal by the Assessee is directed against the Order dated 21.9.2017 of the Ld. Commissioner of Income Tax (Appeals)-18, New Delhi pertaining to assessment year 2011-12.

2. The grounds of appeal raised in the assessee's appeal read as under:-

1. *That on facts and in the circumstances of the case, the Ld. CIT(A) -18 New Delhi, erred in law in upholding the order of the Ld AO, imposing penalty of ' 1,48,329 (One Lakh Forty Eight Thousand*

Three Hundred Twenty Nine only), U/s 271(1)(c) of the Act read with Explanation 1 thereto, levied without recording proper satisfaction in terms of provision of section 271(1) (c) read with section 274 of the Income tax Act, 1961.

1.1 That the impugned penalty order of the AO is invalid and void abinitio, since framed in absence of recording of specific satisfaction or levying of specific charge as to concealment of income or furnishing of inaccurate particulars of income, in the notice issued u/s 274 of the Act.

1.2 That the Ld CIT (A), though appreciating the fact that no specific satisfaction has been recorded by Ld. AO., in an arbitrary manner, on wholly erroneous, illegal and untenable grounds, without adhering to principles of natural justice, has upheld the impugned penalty order.

2. That on facts and in the circumstances of the case the Ld CIT (A), erred in law in upholding the penalty levied on disallowance u/s 94(7) and ad-hoc disallowance, up held by the Ld. CIT (A), in the quantum appeal.

2.1 That the Ld. CIT (A) has failed to consider and appreciate that on identical facts, no penalty on ad-hoc disallowances was initiated by assessing officer in earlier years.

3. That the order dated 21.09.2017 of the Ld. CIT (A) passed U/s 250(6) of the Act is bad in law.

4. That the appellant, craves, leave to add, alter, amend, forego, substitute any or all the grounds of appeal before or at the time of hearing.

3. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

4. At the time of hearing, Ld. Counsel of the Assessee has stated that no specific allegation as to the concealment of particulars of income or furnishing of inaccurate particulars has been levied by the AO in the notice dated 29.03.2013 issued by him u/s. 271(1)© of the Act placed at APB-17 which clearly shows that the same is the standard format of the notice and AO has just ticked on the option of concealment of income or furnishing inaccurate particulars of such income. He further submitted that in the penalty order vide para no. 10, the AO has mentioned that penalty u/s. 271(1)© is hereby imposed for concealment of income of Rs. 4,80,029/- and

vide para no. 11 of the same order the AO has mentioned that "...I levy a penalty of Rs. 1,48,329/- of the tax sought to be evaded on concealment / inaccurate particulars of Rs. 4,80,029/- u/s. 271(1)(c) r.w. Explanation 1 of the Income Tax Act, 1961 in the case of the assessee for AY 2011-12. Therefore, he further stated that the penalty imposed is liable to be quashed on legal ground as the issue is squarely covered by the following decisions.:

- ITAT, Delhi decision in the case of ABR Auto Pvt. Ltd. vs. ACIT in ITA No. 6236/Del/2015 dated 4.12.2017.
- ITAT, 'A' Bench, New Delhi decision dated 05.12.2017 in the case of Ashok Kumar Chordia vs. DCIT passed in ITA No. 5788 to 5790/Del/2014.
- Hon'ble Karnataka High Court decision in the case of CIT & Ors. Vs. M/s Manjunatha Cotton and Ginnig Factory & Ors. (2013) 359 ITR 565
- Apex Court decision in the case of CIT & Anr. Vs. M/s SSA's Emerald Meadows in CC No. 11485/2016 dated 05.8.2016.

5. On the contrary, Ld. DR relied upon the orders of the authorities below.

6. We have heard both the parties and perused the relevant records, especially the orders of the revenue authorities alongwith the provisions of law as well as the case law cited by the Ld. Counsel of the Assessee. WE noe

that no specific allegation as to the concealment of particulars of income or furnishing of inaccurate particulars has been levied by the AO in the notice dated 29.03.2013 issued by him u/s. 271(1)© of the Act placed at APB-17 which clearly shows that the same is the standard format of the notice and AO has just ticked on the option of concealment of income or furnishing inaccurate particulars of such income. We further note that in the penalty order vide para no. 10, the AO has mentioned that penalty u/s. 271(1)© is hereby imposed for concealment of income of Rs. 4,80,029/- and vide para no. 11 of the same penalty order the AO has mentioned that *"...I levy a penalty of Rs. 1,48,329/- of the tax sought to be evaded on concealment / inaccurate particulars of Rs. 4,80,029/- u/s. 271(1)(c) r.w. Explanation 1 of the Income Tax Act, 1961 in the case of the assessee for AY 2011-12."* For the sake of convenience, some of the contents of the penalty Notice dated 29.03.2013 are reproduced as under:-

".....it appears to me that you:-

√ have concealed the particulars of your income or furnished inaccurate particulars of such income.*

You are hereby required to appear before me at 11.00 AM/PM on 23.05.2013 and show cause why an order imposing a penalty on you should not be made under section 271(1)© of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity to being heard in person or through authorized representative you may show cause in writing on or before the

said date which will be considered before any such order is made under section 271(1)© of the Income Tax Act, 1961.”

6.1 After perusing the aforesaid contents of the Notice dated 29.03.2013 as well as the penalty order, we are of the view that the AO has initiated the penalty for concealment of particulars of income or furnishing of inaccurate particulars, which is contrary to the provisions of law. We are of the view that notice issued by the AO u/s. 271(1)© read with Section 274 of the Act is bad in law as it does not specify which limb of section 271(1)© of the Act, the penalty proceedings had been initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars. Therefore, the penalty in dispute is not sustainable in the eyes of law. Our aforesaid view is supported by the following decisions:-

- i) “CIT & Anr. Vs. M/s SSA’s Emerald Meadows – 2015 (11) TMI 1620 – Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 of Income Tax vs. Manjunatha Cotton and Ginning Factory (2013) (7) TMI 620- Karnataka High Court. Thus 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 – decided in favour of assessee.”

- ii) CIT & Anr. Vs. M/s SSA's Emerald Meadows – Hon'ble Supreme Court of India – reported in 2016 (8) TMI 1145 – Supreme Court. The Apex Court held that High Court order confirmed (2015) (11) TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 – Decided in favour of assessee.”

iii) ITAT, 'A' Bench, New Delhi decision dated 05.12.2017 in the case of Ashok Kumar Chordia vs. DCIT passed in ITA No. 5788 to 5790/Del/2014 wherein the Tribunal has observed as under:-

*"7. We have heard both the parties and perused the orders passed by the Revenue Authorities alongwith the relevant records available with us. Firstly, we have perused the Notice dated 26.3.2013 issued by the AO for initiating the penalty and directing the assessee to appear before him at 11.30 AM on 26/04/2013 and issued a Show Cause to the assessee stating therein that **".....you have concealed the particulars of your income or furnished inaccurate particulars of such income..."**. After perusing the notice dated 26.3.2013 issued by the AO to the assessee, we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income or concealment of income as well as in the penalty order dated 30.9.2013 AO has stated that he is satisfied that the assessee*

has concealed particulars of his income, which is contrary to law. In view of above, the penalty is not sustainable in the eyes of law. Our aforesaid view is fortified by the following decisions:-

- i) "CIT & Anr. Vs. M/s SSA's Emerald Meadows - 2015 (11) TMI 1620 - Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 of Income Tax vs. Manjunatha Cotton and Ginning Factory (2013) (7) TMI 620- Karnataka High Court. Thus 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 – decided in favour of assessee.”

ii) CIT & Anr. Vs. M/s SSA's Emerald Meadows – Hon'ble Supreme Court of India – reported in 2016 (8) TMI 1145 – Supreme Court. The Apex Court held that High Court order confirmed (2015) (11) TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 –
Decided in favour of assessee.”*

8. In the background of the aforesaid discussions and respectfully following the precedents, we delete the penalty in dispute and decide the issue in favor of the assessee and against the Revenue.”

iv) ITAT, 'D' Bench, New Delhi decision dated 26.5.2017 in the case of Rajender Jain vs. ACIT passed in ITA No. 6804/Del/2013 wherein the Tribunal has observed as under:-

"7. We have heard both the parties and perused the orders passed by the Revenue Authorities alongwith the relevant records available with us. Firstly, we have perused the assessment order wherein the AO has recorded his satisfaction on the page 2, 2nd para viz. "I am satisfied that it is a fit case for initiation of penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income/concealment of income." We have

also perused the notice dated 31.12.2007 issued by the AO for initiating the penalty and directing the assessee to appear before him at -----AM/PM on -----200----- and issued a Show Cause to the assessee stating therein that why an order imposing the penalty of amount should not be made u/s. 271(1)(c) of the I.T. Act, 1961. After perusing the notice dated 31.12.2007 issued by the AO to the assessee, we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income/concealment of income, but in the penalty order dated 06.11.2009 he has stated that he is satisfied that the assessee has furnished the inaccurate particulars of income.

7.1 However, the Ld. CIT(A) has given clear finding regarding the furnishing of inaccurate particulars. For the sake of convenience, the relevant para no. 5.3.1 of the impugned order passed by the Ld. CIT(A) is reproduced as under:-

"5.3.1 The above findings of the Ld. CIT(A) clearly establishes that the appellant has concealed the income of Rs. 26,50,500/- and did not declare in the return of income inspite of admitting a disclosure of Rs. 40,00,000/- during survey. Thus, the appellant has furnished inaccurate particulars of his income. The facts of the case clearly reveal that the appellant tried to evade payment of taxes by furnishing inaccurate particulars of income. Therefore, I hold that the AO was fully justified in levying the penalty u/s. 271(1)(c) of the Act. The penalty levied by the AO is upheld. This ground of appeal is rejected."

8. Keeping in view of the aforesaid finding of the Ld. CIT(A), we are of the considered view that the AO has passed the assessment

*order wherein the AO has recorded his satisfaction on the page 2, 2nd para viz. "I am satisfied that it is a fit case for initiation of penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income/concealment of income." Further the AO vide his Notice dated 31.12.2007 for initiating the penalty and directed the assessee to appear before him at -----AM/PM on ----
----200----- and issued a Show Cause to the assessee stating therein that why an order imposing the penalty of amount should not be made u/s. 271(1)(c) of the I.T. Act, 1961. After perusing the notice dated 31.12.2007 issued by the AO to the assessee, we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income/concealment of income, but in the penalty order dated 06.11.2009 he has stated that he is satisfied that the assessee has furnished the inaccurate particulars of income. In our view the penalty in dispute is not*

sustainable in the eyes of law, because the AO has not recorded any clear finding whether the assessee was guilty of concealment of income or furnishing of inaccurate particulars of income. Secondly, the notice u/s. 271(1)(c) has been issued to the assessee levying the penalty for furnishing of inaccurate particulars of income/concealment of income, whereas the penalty in dispute has been levied by the AO on account of furnishing of inaccurate particulars. In our view the penalty is not sustainable in the eyes of law. Our aforesaid view is fortified by the following decisions:-

- i) "CIT & Anr. Vs. M/s SSA's Emerald Meadows - 2015 (11) TMI 1620 - Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) to be bad in law as it did*

not specify which limb of Section 271(1)© 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 of Income Tax vs. Manjunatha Cotton and Ginning Factory (2013) (7) TMI 620-Karnataka High Court. Thus 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 – decided in favour of assessee.”

- ii) *CIT & Anr. Vs. M/s SSA’s Emerald Meadows – Hon’ble Supreme Court*

of India – reported in 2016 (8) TMI 1145 – Supreme Court. The Apex Court held that High Court order confirmed (2015) (11) TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 – Decided in favour of assessee.”

8.1 In the background of the aforesaid discussions and respectfully following the precedents, we delete the penalty in dispute and decide the issue in favor of the assessee and against the Revenue.”

7. Keeping in view of the aforesaid discussion and respectfully following the aforesaid precedents, we cancel the penalty order and accordingly allow

the legal grounds raised by the assessee. Since the penalty has been cancelled, the other grounds have become academic and need not be adjudicated.

8. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced on 10/05/2019.

Sd/-

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 10/05/2019

SRBhatnagar

Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4. CIT (A) 5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches