

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.8091/Del./2018
Assessment Year 2010-2011

M/s. SPJ Infracon Ltd., 86, UB-24, Jawahar Nagar, Near Kamla Nagar, New Delhi – 110007. PAN AANCS4893B	vs.,	The ACIT, Circle-22(2), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Manpreet Singh Kapoor, F.C.A
For Revenue :	Shri S.L. Anuragi, Sr.DR

Date of Hearing :	03.06.2019
Date of Pronouncement :	03.06.2019

ORDER

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-30, New Delhi, Dated 05.10.2018, for the A.Y. 2010-2011, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

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

3. Learned Counsel for the Assessee submitted that A.O. before levy of the penalty issued show cause notice Dated 08.03.2016 which is invalid and defective and as such no penalty is leviable. He has relied upon several decisions in support of the same contention.

4. On the other hand, Ld. D.R. relied upon Orders of the authorities below and submitted that failure of the A.O. to strike-off column in show cause notice is no ground for deleting the penalty. The Ld. D.R. relied upon the Order of ITAT, Chennai Bench reported in TS-289-ITAT-2019-CHNY.

5. I have considered the rival submissions. In this case, the A.O. issued show cause notice before levy of the penalty under section 271(1)(c) of the I.T. Act, 1961, Dated 08.03.2016 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 & 5.”

5.1. These facts, therefore, clearly show that notice issued by the A.O. for levy of penalty under section 271(1)(c)

of the Act to be bad in law as it did not specify in 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. 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 73 taxmann.com 241 and this decision is confirmed by the Hon'ble Supreme Court reported in 73 taxmann.com 248. On similar set of facts, the ITAT, Delhi Benches are taking a consistent view that in such circumstances, levy of penalty is invalid. Since the show cause notice is invalid due to the above reason and as such the entire penalty proceedings are vitiated. Thus, no penalty is leviable against the assessee. The decisions relied upon by the Ld. D.R. would not support the case of the Revenue, In view of the above, I set aside the Orders of the authorities below and cancel the penalty.

6. In the result, appeal of assessee allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 03rd June, 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.