

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.307/Del./2019
Assessment Year 2007-2008

Mr. Sanjeev Kumar Khatri, New Delhi. PAN AKNPK5470F C/o. M/s. RRA TAX INDIA, D-28, South Extension, Part-1, New Delhi-110049.	vs.,	The Income Tax Officer, Ward-2(3), Faridabad.
(Appellant)		(Respondent)

For Assessee :	Shri Somil Agarwal, And Ms. Monika Ghai, Advocates.
For Revenue :	Shri S.L. Anuragi, Sr.DR

Date of Hearing :	04.06.2019
Date of Pronouncement :	04.06.2019

ORDER

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Faridabad, Dated 28.11.2018, for the A.Y. 2007-2008, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. Learned Counsel for the Assessee, at the outset, submitted that the A.O. issued show cause notice before

levy of the penalty Dated 30/31.03.2015 in which the A.O. has mentioned as under :

“Have concealed the particulars of your income or furnished inaccurate particulars of such income under section 271(1)(c).”

2.1. Learned Counsel for the Assessee, therefore, submitted that since it is not mentioned in the notice as to under which limb of Section 271(1)(c) of the I.T. Act, penalty proceedings are initiated, therefore, notice is defective and invalid and the penalty is liable to be cancelled. He has relied upon the following Orders ITAT, Delhi Bench :

- (i) Order of ITAT, Delhi SMC-Bench in the case of Shri Jivan Dhingra, New Delhi vs. ITO, Ward-33(5), New Delhi in ITA.No.5373/Del./2018 Dated 01.05.2019.
- (ii) Order of ITAT, Delhi G-Bench in the case of Sanjay Mittra, New Delhi vs. DCIT, Central Circle-26, New Delhi in ITA.No.5206/Del./2016, Dated 01.10.2018.

3. 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.

4. I have considered the rival submissions. In this case, the A.O. issued show cause notice Dated 30/31.03.2015 before levy of the penalty under section 271(1)(c) of the I.T. Act, 1961. From the perusal of the show cause notice Dated 30/31.03.2015, it is clear that the show cause notice issued by the A.O. for levy of the 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.

5. In the result, appeal of assessee allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 04th June, 2019

VBP/-

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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.