

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.7657/Del./2018  
Assessment Year 2014-2015

Mrs. Vijay Laxmi Rajput, 1878 Main Road, Ganeshpura, Tri Nagar, Delhi – 110 035. PAN AADPR4828E	vs.,	The Income Tax Officer, Ward-40(4), Room No.1708, E-2 Block, Pratyaksh Kar Bhawan, Civic Centre, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri M.P. Gupta And Shri M.K. Gupta, Advocates.
For Revenue :	Shri V.R. Sonbhadra, Sr.DR

Date of Hearing :	06.06.2019
Date of Pronouncement :	06.06.2019

**ORDER**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-14, New Delhi, Dated 27.09.2018, for the A.Y. 2014-2015, 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 A.O. made addition of Rs.20,80,869/- on account of disallowance of exemption of long term capital gains incurred on selling of

shares and Rs.62,426/- on account of unexplained expenditure on account of commission. The A.O. in the assessment order initiated the penalty proceedings for furnishing inaccurate particulars and concealment of income. The A.O. before levy of the penalty issued show cause notice to assessee Dated 28.12.2016 and levied the penalty for furnishing inaccurate particulars of income and thereby concealed income from levy of tax within the meaning of Explanation-1 to Section 271(1)(c) of the I.T. Act, 1961 on the aforesaid additions. The Ld. CIT(A) dismissed the appeal of assessee.

3. The Learned Counsel for the Assessee, at the outset, contended that show cause notice dated 28.12.2016 issued before levy of the penalty is invalid and is bad in law. The same is reads as under :

*“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 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, relied upon the Orders of the authorities below and submitted that since the assessee surrendered the amount for taxation, therefore, penalty was rightly imposed.

5. After considering the rival submissions, I am 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 28.12.2016 which is also mentioned in the penalty order in which A.O. 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. I, accordingly, 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 06<sup>th</sup> 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.