

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'F', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 6325/Del/2014  
Assessment Year: 2010-11**

Rathi Industries Limited, A-24/6, Mohan Co-operative Industrial Estate, New Delhi PAN-AAACR0462Q <b>(Appellant)</b>	<b>vs.</b>	DCIT, Circle 15(1), New Delhi  <b>(Respondent)</b>
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<b>Appellant by</b>	S/Sh. Ved Jain & Ashish Goel, Advocates
<b>Respondent by</b>	Smt. Rinko Singh, Addl. CIT/DR

<b>Date of Hearing</b>	09.05.2019
<b>Date of Pronouncement</b>	24.05.2019

**ORDER**

**Per L.P. Sahu, A.M.:**

This is an appeal filed by the assessee against the order of Id. CIT(A)-XVIII, New Delhi for the assessment year 2010-11, challenging the penalty imposed and sustained u/s. 271(1)(c) of the Income-tax Act, 1961.

2. The brief facts of the case are that based on the following additions made in regular assessment of assessee, the Assessing Officer imposed a penalty of Rs.17,76,910/- u/s. 271(1)(c) of the Act against the assessee :

Disallowance on sales promotion expenses	:	Rs.10,74,750/-
Disallowance of duties and taxes	:	Rs.6,26,752/-
Disallowance of depreciation on addition to		

Plant and Machinery	:	Rs.8,47,495/-
Disallowance on account of Non-deduction Of TDS	:	Rs.4,54,101/-
Disallowance of donation	:	Rs.22,14,653/-

The penalty so imposed against the assessee was affirmed by the Id. CIT(A) in appeal filed by the assessee. Aggrieved by the impugned order, the assessee is in appeal before the Tribunal.

3. The Id. AR of the assessee contended that all the material facts pertaining to above additions were unfolded before the Assessing Officer in response to various queries made by the Assessing Officer and all the details/evidences were filed. However, the Assessing Officer did not consider them in right perspective, leading to adhoc additions. It is stated that simply because the above additions were not challenged by assessee, the assessee cannot be saddled with penalty u/s. 271(1)(c) unless the Assessing Officer makes out a good case for concealment of particulars of income or furnishing of inaccurate particulars of income. The Id. Authorized Representative also put forth legal aspect of the case that the penalty proceedings are vitiated, as the notice for penalty does not state the specific charge as to whether the penalty is proposed for concealment of particulars of income or for furnishing inaccurate particulars of income. In support, the Id. Authorized Representative has placed reliance on the decision of Hon'ble Supreme Court in CIT vs. SSA's Emerald Meadows (2016) 73 taxmann.com 248 (SC), decision of Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory (2013) 35 taxmann.com 250 (Karnataka) and several other

decisions of ITAT Delhi Benches. The ld. AR has also filed a written synopsis, which is placed on record.

4. On the other hand, the ld. DR relied on the orders of the authorities below and submitted that the ld. authorities below were quite justified to impose penalty u/s. 271(1)(c) of the Act, as the assessee could not be able to substantiate the claims made before the Assessing Officer. Therefore, the penalty has rightly been imposed for furnishing inaccurate particulars of income.

5. We have heard the rival submissions and have gone through the material on record as well as various decisions. On going through the assessment order, we note that it is a case of disallowances made by the Assessing Officer after rejecting reply of assessee and various details/evidences filed before the Assessing Officer. Certain expenses have been disallowed on adhoc basis whereas in respect of some other expenses, the additions have been made on account of necessary details not being available. The addition on account of donation has been made for want of 80G certificate. Thus, we do not find it a fit case for concealment of particulars of income or furnishing of inaccurate particulars thereof. In view of these facts, it cannot be said that there was any concealment on the part of the assessee. The assessee having disclosed the material facts which have not been found false, no penalty is leviable.

6. It is further noted that the notice issued for imposition of penalty does not state specifically as to for which charge – whether concealment of particulars of income or furnishing of inaccurate particulars of income- the impugned penalty was proposed to be imposed. This lapse on the part of Assessing Officer, in our considered opinion, goes to vitiate the initiation of penalty proceedings, as the notice should specifically state the charges, as contemplated u/s. 271(1)(c) of the IT Act. We, therefore, are in agreement with the contention of the assessee that non-specification of the charge vitiates the entire penalty proceedings goes to vitiate the penalty proceedings. For this view we stand fortified by the decision of Hon'ble Apex Court in CIT vs. SSA's Emerald Meadows, CC No. 11485/2016 dated 05.08.2016, where the SLP filed by the Revenue against the deletion of penalty by the Hon'ble High Court has been dismissed. Similar view has been taken by the Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar), which has also been followed in various other decisions of ITAT. Thus, respectfully relying on the aforesaid decisions, we find no justification to sustain the penalty imposed against the assessee. Accordingly, the penalty imposed is deleted on this legal aspect of the case too.

7. In the result, the appeal is allowed.

Order pronounced in the open court on 24.05.2019.

Sd/-

**(Amit Shukla)**  
**Judicial member**

Sd/-

**(L.P. Sahu)**  
**Accountant Member**

Dated: 24,05,2019

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