

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 1420/DEL/2017 (A.Y 2012-13)

Netambit Info source E- Services Pvt. Ltd. 90/31B, 1 st Floor, Malviya Nagar New Delhi AABCN2503K (APPELLANT)	Vs	DCIT Circle-18(1) New Delhi (RESPONDENT)
--	----	--

Appellant by	Sh. Ved Jain, Adv & Sh. Ashish Goel, CA
Respondent by	Ms. Nidhi Srivastava, CIT(A) DR

Date of Hearing	01.07.2019
Date of Pronouncement	02.07.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 19/01/2017 passed by CIT(A)-33, New Delhi for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals)[CIT(A)] upholding the levy of penalty by the AO u/s 271(1)(c) of the Act is bad, both in the eyes of law as well as on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in upholding the levy of penalty u/s 271(1)(c) of Rs.

16,71,400/- on account of disallowances made by the AO.

3. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the penalty under Section 271(1)(c) of the Act levied by the AO on the basis of a notice under Section 271(1)(c) whereby no specific allegation with regard to concealment of income or furnishing of inaccurate particulars has been levied.

4. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the penalty under Section 271(1)(c) of the Act despite the fact that there is no concealment of income or furnishing of inaccurate particulars filed by the assessee.

5. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty under Section 271(1)(c) of the Act on a disallowance of Rs.25,64,049/- made by the A.O invoking the provision of Section 40(a) (ia) of the Act.

(ii) That the CIT(A) has erred in confirming the above said penalty ignoring the fact that the provision of Section 40(a)(ia) being in the nature of deeming provision, even if the disallowance can be made, the penalty on the same is not called for.

6. (i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the penalty under Section 271(1)(c) of the Act on a disallowance of interest amounting to Rs. 28,45,010/- made by the assessee.

(ii) That the above said penalty is not leviable as the addition was made only by estimating the rate of interest arbitrarily at 13%.

7. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the penalty under Section 271(1)(c) of the Act without giving any finding related to concealment of income or

furnishing of inaccurate particulars.

8. That the learned CIT(A) has erred, both on facts and in law, in upholding the levy of penalty, ignoring the fact that the penalty proceedings are independent proceedings, and as such, mere disallowance or addition could not lead to the levy of penalty.”

3. The assessee Company filed its return of income on 28/9/2012 declaring current year loans at Rs. 63,43,06,818/-. The assessment was completed on 20/03/2015 at loss of Rs.62,88,97,759/- after making disallowance of expenses u/s 40(a)(ia) made to Rs.25,064,49/- and addition on account of disallowance of interest expenses amounting to Rs.28,45,000/- The Assessing Officer also initiated penalty proceedings u/s 271(1)(c) of the Act. The penalty proceedings were completed on 30/09/2015 by imposing penalty at Rs. 16,71,400/-.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the notice issued u/s 274 read with Section 271(1)(c) is invalid as it did not specify the charge against which the penalty is levied. Even in the assessment order, there is no separate charge mentioned. Thus, not only the notice issued to the assessee u/s 274 read with Section 271(1)(c) is defective, but Assessing Officer has not even made himself satisfied at the time of making disallowance/additions in assessment order whether the assessee furnished inaccurate particular of income or concealed particulars of income. Therefore, the Ld. AR submitted that entire penalty proceeding stand vitiated, if the notice itself is not in accordance with law. The Ld. AR relied upon the decision of the Hon'ble Karnataka High Court in case of CIT(A) Vs. M/s Manjunathan and Ginni Factory and ors 359 ITR 565. The above principal was further affirmed by the Apex Court in case of CIT(A) Vs. M/s SSA

Emerald Medals. The Ld. AR further submitted that the penalty cannot be levied on the disallowance u/s 40(a) (ia) as the assessee was under the belief that TDS is not liable to be deducted on payment of NBFCs. The Ld. AR further submitted that the CIT(A) also has not given any reason while confirming the order passed by the Assessing Officer. The Ld. AR further submitted that on similar issue the Tribunal in assessee's own case for Assessment Year 2011-12 deleted the penalty.

6. The Ld. DR relied upon the assessment order, penalty order and the order of the CIT (A).

7. We have heard both the parties and perused the material available on record. First of all, in the notice issued u/s 274 r.w.s 271(1)(c) of the Income Tax Act, 1961, there was no specific charges as relates to concealment of income or furnishing of inaccurate particulars of income. Therefore, there was no concealment on the part of the assessee. This was a simple case of disallowance u/s 40(a) (ia) as the assessee was under the belief that TDS is not liable to be deducted on payment of NBFCs. Thus, the authorities cited by the Ld. AR are applicable in the present case. In respect of interest expenses, the same was not concealed by the assessee before the Assessing Officer. Thus, there is no concealment. Thus, Section 271(1)(c) of the Act was not correctly invoked by the Assessing Officer. The CIT(A) also overlooked the actual intention of the penalty proceedings which clearly set out that when there is inaccurate particulars or concealment on part of the assessee, then the same should be proceeded. But in the present case, the assessee has disclosed all the factual aspects before the Assessing Officer which cannot be stated that there was concealment of particulars of income or the assessee furnished inaccurate particulars of income. The Assessee has also filed all the details during the regular assessment proceedings. From the notice, it can be seen that the Assessing Officer was not sure under which provisions of Section 271 of the Income Tax Act, 1961, the assessee is liable for penalty. The issue is

squarely covered by the decision of the Hon'ble Supreme Court in case of M/s SSA' Emerald Meadows. The extract of the Hon'ble Karnataka High Court in M/s. SSA' Emerald Meadows are as under which was confirmed by the Hon'ble Apex Court:

“3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short ‘the Act’) to be bad in law as it did not specify 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 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) 359 ITR 565.

4. In our view, 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 in this appeal for determination by this Court. The appeal is accordingly dismissed.”

Besides that in assessee's own case for A.Y. 2011-12 the same issue has been decided by the Tribunal in ITA No. 1704/Del/2016 order dated 16.02.2018 it is held that merely because the assessee company did not challenge the addition before the CIT(A), is no ground to levy penalty against the assessee company. Thus, the penalty imposed u/s 271(1)(c) of the Act is set aside. The appeal of the assessee is allowed.

8. In result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 2nd JULY, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 02/07/2019

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	01.07.2019
Date on which the typed draft is placed before the dictating Member	01.07.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	