

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES 'G', NEW DELHI**

**Before Sh. Amit Shukla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 2651/Del/2017 : Asstt. Year : 2005-06**

**ITA No. 2652/Del/2017 : Asstt. Year : 2009-10**

**ITA No. 2653/Del/2017 : Asstt. Year : 2010-11**

M/s True Blue Finlease Ltd., 527B, 5 <sup>th</sup> Floor, HBN Officer, D-Mall, Plot-D, Distt. Centre, Paschim Vihar, New Delhi-110087	Vs	DCIT, Central Circle-29, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAAC4280C</b>		

**Assessee by : Sh. Sunil Arora, CA**

**Revenue by : Sh. S. S. Rana, CIT DR**

<b>Date of Hearing: 20.08.2019</b>
------------------------------------

<b>Date of Pronouncement: 21.08.2019</b>
--

**ORDER**

**Per Bench:**

Since the issues involved in all these appeals are common, they are heard together and adjudicated by the way of a common order.

Following grounds have been raised in this appeal:

*"1. Under the facts and the circumstances of the case, penalty order passed u/s 271(1)(c) of the Act by the Id. A.O. and confirmed by the Id. CIT(A) is invalid & bad in law as from the notice issued u/s 274 r.w.s. 271(1)(c) of the Act it is not discernable as to whether the penalty proceedings was initiated for furnishing of inaccurate particulars of income or concealment of income and therefore, the impugned penalty order passed deserves to be quashed.*

*2. Under the facts and circumstances of the case, the Id. CIT(A) has grossly erred in passing the appellate order*

*without affording adequate opportunity of being heard to the appellant.*

*3. Under the facts and circumstances of the case, the Id. First Appellate Authority has grossly erred in upholding the action of Id. Assessing Officer imposing the penalty of Rs.8,49,912/- u/s 271(1)(c) of the Income Tax Act, 1961 which is highly injudicious, unwarranted, against the facts of the case and bad in law."*

2. Heard the arguments of both the parties and perused the material on record.

3. A search & seizure operation u/s 132 of the Income Tax Act, 1961 was carried out on the assessee on 20.11.2009. The assessee is a part of the business conglomerate engaged in diary development , marketing of diary products, real estate development, home loan finance, Insurance agency & running a broadcast channel. Assessment u/s 153A of the Act has been completed on 30.12.2011. We find that at the conclusion of assessment proceedings, the Assessing Officer has held at para 1.2 that he was satisfied that the assessee company has "concealed the particulars of his income" and for that default penalty proceedings u/s 271(1)(c) of the Act are also being initiated.

4. Further, at para no. 6, the Assessing Officer mentioned that he was satisfied that the assessee company has "concealed the particulars of its income" and for that default penalty proceedings u/s 271(1)(c) of the Act are also being initiated. We also find that the penalty notice issued on 01.05.2012 by the ACIT, Central Circle-4 in connection with the proceedings u/s 271(1)(c) of the Act r.w.s. 274 of the Act for relevant assessment year has not specified under which limb of the

provision u/s 271(1)(c) of the Act, the penalty is being initiated. For ready reference, the relevant portion of the notice issued u/s 274 is reproduced as under:

*"Whereas in the course of proceedings before me for the A.Y. 2005-06, it appears to me that you have concealed the particulars of your income or furnished inaccurate particulars of such income.*

*You are hereby requested to appear before me at 11.30 a.m. on 31.05.2012 and show cause why an order imposing a penalty on you should not be made u/s 271 of the I.T. Act, 1961. If you do not wish to avail yourself of this opportunity of being Heard the arguments of both the parties and perused the material available on record. in person or through Authorized Representative you may submit your submissions in writing on or before the said date which will be considered before any such order is made u/s 271(1)(c) of the I.T. Act, 1961."*

5. Further, while levying penalty u/s 271(1)(c), the Assessing Officer at para no. 3 held that "since the assessee has concealed the particulars of its income penalty proceedings u/s 271(1)(c) of the Act is initiated at the time of completion of assessment proceedings". However, at para no. 9, the Assessing Officer has levied penalty and held the assessee in default for "furnishing inaccurate particulars of its income." Thus, there is a mismatch on the reasons on which the penalty has been initiated and on which the penalty has been levied.

6. The Id. AR brought to our notice, the judgment of the Hon'ble Jurisdictional High Court in the case of Sahara India Life Insurance Company Ltd. in ITA No. 426/2019 dated 02.08.2019 wherein the Hon'ble High Court held as under:

*"21 The Respondent had challenged the upholding of the penalty imposed under Section 271(1) (c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) and observed that the notice issued by the AO would be bad in law if it did not specify which limb of Section 271(1)(c) the penalty proceedings had been initiated under i.e. whether for concealment of particulars of income or for furnishing of*

*inaccurate particulars of income. The Karnataka High Court had followed the above judgment in the subsequent order in Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 Taxman.com 241 (Kar), the appeal against which was dismissed by the Supreme Court of India in SLP No. 11485 of 2016 by order dated 5th August, 2016.*

*22. On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises."*

7. Against the arguments of the Id. AR, the Departmental Representative heavily relied on the judgment of Sundaram Finance Ltd. Vs CIT (2018) 403 ITR 407 (Madras) and argued that the Hon'ble High Court held that where notice did not show the nature of default, it was a question of fact. The assessee has understood purport and import of the notice, hence, no prejudice was caused to the assessee.

8. We have gone through the facts of the case and find that the Assessing Officer has not made it clear under which limb of the provisions of Section 271(1)(c) of the Act, the penalty is being levied. There is glaring discrepancy between initiation of the penalty and levy of penalty. Hence, respectfully following the judgment of the Hon'ble Jurisdictional High Court, we hereby hold that the penalty levied by the Assessing Officer cannot be held be valid in the eyes of law.

9. In the result, the appeals of the assessee are allowed.  
(Order Pronounced in the Open Court on 21/08/2019).

Sd/-

**(Amit Shukla)**  
**Judicial Member**

**Dated: 21/08/2019**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**