

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

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

**I.T.A. No. 8016/DEL/2018 (A.Y. 2009-10)
I.T.A. No. 8017/DEL/2018 (A.Y. 2010-11)
I.T.A. No. 8018/DEL/2018 (A.Y. 2011-12)
I.T.A. No. 8019/DEL/2018 (A.Y. 2012-13)**

Krishna Devi H. No. 823, Palam Vihar More, Bijwasan, New Delhi-110061 PAN : BXWPD1061J APPELLANT	Vs.	ACIT Circle-44(1), New Delhi (RESPONDENT)
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Appellant by	Sh. B.L.Gupta, ITP
Respondent by	Sh. S.L.Anuragi, Sr.DR

Date of Hearing	09.09.2019
Date of Pronouncement	11.09.2019

ORDER

PER SUCHITRA KAMBLE, JM

These appeals are filed by the assessee against orders dated 09.10.2018 passed by the Commissioner of Income Tax (Appeals)- 15, Delhi for assessment years 2009-10, 2010-11, 2011-12 and 2012-13 respectively.

2. In all these appeals grounds are identical therefore, we reproducing the grounds for A.Y. 2009-10 as under:

ITA No 8016 /Del/2018 (A.Y. 2009-10)

1. *“On the facts and in the circumstance of the case and in law the CIT(A) -15 was incorrect and unjustified in dismissing the appeal of the assessee.*

2. *On the facts and in the circumstance of the case and in law the CIT(A) -15 was incorrect and unjustified in sustaining the penalty unjustifiably levied by the AO u/s 271(1)(c) by holding that Hon'ble Supreme Court judgment in the case of SSA's Emerald Meadows reported in 386 ITR 13 and Manjunath etc would not help the assessee.*
3. *On the facts and in the circumstance of the case and in law the CIT(A) -15 was incorrect and unjustified in holding that penalty levied u/s 271(l)(c) by the AO was correct and justified even in the presence of SSA's Emerald Meadows and Manjunath judgments and also others as given before the CIT(A).*
4. *On the facts and in the circumstance of the case and in law the CIT(A) -15 was incorrect and unjustified in holding that penalty notice issued by the AO u/s 271(l)(c) was legal and therefore the contention of the assessee that penalty notice infact was illegal and bad in law itself, in view of the aforesaid two judgments and therefore the penalty order was not sustainable.*
5. *On the facts and in the circumstance of the case and in law the reliance on several judgments of Hon'ble Supreme Court, High Courts and Tribunals in dismissing the appeal of the assessee are misplaced since they are either not applicable in the present case or rendered prior to the aforesaid two judgments.*
6. *On the facts and in the circumstance of the case and in law the CIT(A) -15 was incorrect and unjustified in holding that there is concealment of income even when the income assessed is the same as returned.*
7. *On the facts and in the circumstance of the case and in law the CIT(A) -15 was incorrect and unjustified in holding that penalty for concealment of income has been rightly levied even when the penalty notice has been issued both for concealment of income and also for filing incorrect particulars of income which is bad in law since inappropriate words have not been struck of.*
8. *On the facts and in the circumstance of the case and in law the CIT(A) -15*

was incorrect and unjustified in holding the penalty proceedings have been rightly initiated even when the penalty proceedings have not been legally initiated even after the amendment in the Act.

9. *Without prejudice to above grounds of appeal, On the facts and in the circumstance of the case and in law the CIT(A) -15 was incorrect and unjustified in confirming penalty u/s 271(l)(c) without proving either the concealment or filing of inaccurate particulars of income and hence the orders of Authorities below needs quashing.”*

3. The brief facts of A.Y. 2009-10 are taken hereinafter. The Assessing Officer had information that during the relevant F.Y. 2008-09, the assessee received rental income of Rs. 6,00,000/-, as his share of income from house property. Since the income exceeded maximum amount which is not chargeable to Income Tax, the assessee was liable to file return u/s 139, however it was also revealed to Assessing Officer that no ITR was filed by the assessee for the relevant A.Y. 2009-10. Accordingly, the Assessing Officer issued notice u/s 148 on 29.03.2016, after observing that rental income amounting to Rs. 6,00,000/- has escaped assessment. The assessee was duly served with the notice u/s 148 and he was asked to submit his return within 30 days of receipt of notice. However, even after receipt of the notice u/s 148, no return was filed by the assessee within the time limit specified in the notice or even afterwards. The assessee objected to the issue of notice u/s 148 and the objections were disposed off by the Assessing Officer. Thereafter, the Assessing Officer issued notice dated 24.06.2016, u/s 142(1) of Income Tax Act to the assessee asking him to appear on 05.07.2016 and also submit his return. In response, the assessee filed the online ITR on 30.06.2016, in which the total income amounting to Rs. 4,58,717/- was declared. In the total income the amount of income under house property escaping assessment was duly offered to tax, after claiming benefit of deduction @ 30%. Since the entire rental income, which was received by the assessee, as per information in possession

of the Assessing Officer was fully disclosed/declared by the assessee in his ITR, the Assessment was completed at the same figure of total income amounting to Rs. 4,58,717/-. In this manner, the returned income was accepted by the Assessing Officer. Subsequently, the Assessing Officer levied penalty u/s 271(1)(c), after treating that the amount of Rs. 4,58,717/- represented concealed income.

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 Notice u/s 274 read with Section 271(1)(c) of the Income Tax Act dated 26.08.2016 did not specify the particular charge of concealment or furnishing inaccurate particulars of such income. The Ld. AR further submitted that in assessee's own case for A.Y. 2013-14 being ITA No. 8020/Del/2018 order dated 03.06.2019, the Tribunal allowed the appeal of the assessee. Besides that the Ld. AR also relied upon the decision of Hon'ble Apex Court in case of CIT vs. SSA's Emerald Meadows (2016) 73 Taxman.com 241(Kar) confirming the Hon'ble Karnataka High Court's decision in case of CIT vs. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) as well as Hon'ble Delhi Court decision in case of Pr. CIT vs. M/s Sahara India Life Insurance Co. Ltd. (ITA No. 475/2019 order dated 02.08.2019).

6. The Ld. DR relied upon the Assessment Order, Penalty order and the order of the CIT(A), but could not distinguish the decisions relied upon by the Ld. AR.

7. We have heard both the parties and perused all the relevant 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.

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 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. 2013-14 the same issue has been decided by the Tribunal decided this issue in favour of the assessee. The

Hon'ble Jurisdictional High Court in case of Sahara India Life Insurance Co. Ltd. (supra) 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.”

Thus, the penalty imposed u/s 271(1)(c) of the Act is set aside. All the four appeals of the assessee are allowed as all the appeals are identical.

8. In result, the appeals of the assessee are allowed.

Order pronounced in the Open Court on 11th September, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 11/09/2019

Binita

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	09.09.2019
Date on which the typed draft is placed before the dictating Member	.09.2019
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	