

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.4747/Del./2016  
Assessment Year 2009-2010

Hemla Embroidery Mills Private Ltd., 14/6, Mathura Road, Faridabad. PAN AAACH4302B	vs.,	The DCIT, Circle-1, Faridabad.
(Appellant)		(Respondent)

For Assessee :	Shri M.P. Rastogi, Advocate.
For Revenue :	Shri S.S. Rana, CIT-D.R.

Date of Hearing :	03.10.2019
Date of Pronouncement :	04.10.2019

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Faridabad, Dated 01.07.2016 for the A.Y. 2009-2010, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. We have heard the Learned Representatives of both the parties.

3. The assessee has challenged the levy of penalty in this case as well as raised additional ground of appeal stating therein that notice issued before levy of the penalty is bad in law and is vague and did not provide as to under which limb of Section 271(1)(c) of the I.T. Act, penalty proceedings have been initiated. Therefore, the entire penalty order is illegal and void in law. Since it is a legal issue, therefore, same is admitted for disposal of the appeal.

4. Learned Counsel for the Assessee referred to show cause notice Dated 30.12.2011 issued before levy of the penalty in which the A.O. has mentioned as under :

*“Have concealed the particulars of your income or furnished inaccurate particulars of such income.”*

4.1. He has, also referred to show cause notice Dated 13.02.2015 before levy of the penalty in which A.O. has mentioned as under :

*“In this regard it may be noted that hearing with respect to imposition of penalty u/s 271(l)(c) in your case for the assessment year 2009-10 is fixed for 23.02.2015 at*

*11:30 A.M. It is requested that you may either attend or submit a written reply to this office by the said date, failing which it shall be presumed that you have nothing to say in this matter and your case shall be decided on merits. If you have already filed any reply, please file a copy of the same.”*

4.2. He has, therefore, submitted that penalty is illegal and bad in law and submitted that the issue is covered by the Judgment of the Hon'ble Delhi High court in the case of Pr. CIT vs. M/s. Sahara India Life Insurance Company Ltd., 2019 (8) TMI 409 (Del.) vide Judgment Dated 02.08.2019 in paras 21 and 22 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.”*

5. The Ld. D.R. on the other hand, relied upon the Orders of the authorities below and relied upon Judgment of Hon'ble Madras High Court in the case of Sundaram Finance Ltd., vs. CIT [2018] 93 taxmann.com 250 (Mad.) and Judgment of Hon'ble Supreme Court in the case of Sundaram Finance Ltd., vs. CIT [2018] 99 taxmann.com 152 (SC).

6. We have considered the rival submissions. In this case, the A.O. issued show cause notice for levy of penalty in which A.O. has mentioned both the limbs of section 271(1)(c) of the Act that assessee has concealed the particulars of income or furnished inaccurate particulars of such income. The issue of the notice is bad in law as it did not specify under which limb of Section 271(1)(c) of the I.T. Act, penalty proceedings have been initiated whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The issue is, therefore, covered by Judgment of Hon'ble Karnataka High Court in the case of CIT vs. M/s. SSAs Emerald Meadows 73 taxmann.com 241 (Kar.) and confirmed by the Hon'ble Supreme Court reported in 73 taxmann.com 248 (SC). Further, the Hon'ble Delhi High court in the case of Pr. CIT vs. M/s. Sahara India Life Insurance Company Ltd., (supra) decided the same issue in favour of the assessee. Following the same, we are of the view that since notice is bad in law, therefore, the entire penalty proceedings are vitiated and as such no penalty is leviable against the assessee. We,

accordingly, set aside the Orders of the authorities below and cancel the penalty.

7. In the result, appeal of assessee allowed.

Order pronounced in the open Court.

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 04<sup>th</sup> October, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "C" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :  
Delhi.