

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

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

ITA.No.4442/Del./2016  
Assessment Year 2012-2013

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| Shri Harish Chander<br>Kapoor, Prop. M/s. Lucky<br>Enterprises, Gurgaon.<br>PIN 122001 PAN AICPK4192K<br>C/o. Shri Kapil Goel,<br>Advocate, F-26/124,<br>Sector-7, Rohini, Delhi. | vs., | The Income Tax Officer,<br>Ward – 2 (1),<br>Gurgaon. |
| (Appellant)   |      | (Respondent)   |

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| For Assessee : | Shri Kapil Goel, Advocate. |
| For Revenue :  | Ms. Rakhi Vimal, Sr. D.R.  |

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| Date of Hearing :       | 09.10.2019 |
| Date of Pronouncement : | 11.10.2019 |

**ORDER**

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

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-1, Gurgaon, Dated 14.06.2016 for the A.Y. 2012-2013.

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

3. Learned Counsel for the Assessee submitted that prior to levy of the penalty under section 271(1)(c) of the I.T. Act, A.O. issued show cause notice dated 02.03.2015 in which A.O. has mentioned as under :

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

3.1. He has further submitted that A.O. issued another show cause notice under section 271(1)(c) of the I.T. Act, 1961, Dated 14.08.2015 for levy of the penalty in which A.O. has mentioned as under :

*“During the course of assessment proceeding for the Asst. Year 2012-13 penalty proceedings u/s 271(l)(c) of the Income-tax Act, 1961 were initiated vide this office notice dated 02.03.2015 against you but no reply appears to have been received from you. You are hereby afforded another opportunity to show cause as to why the above penalty be not imposed upon you for the said default.”*

3.2. He has submitted that A.O. similarly in the assessment order has mentioned that he has satisfied that assessee has concealed his particulars/furnished inaccurate particulars of income. He has, therefore, submitted that A.O. has not mentioned in the above show cause notices as to under which limb of Section 271(1)(c) of the I.T. Act, penalty proceedings under section 271(1)(c) of the I.T. Act have been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. Therefore, penalty is liable to be cancelled. He has submitted that issue is covered by the Orders of ITAT, Delhi C-Bench in the case of Shri Gulshan Kumar Jhurani, New Delhi vs., ACIT, Circle-37(1), New Delhi, Dated 04.10.2019 in ITA.No.704/Del./2015 and Hemla Embroidery Mills Private Ltd., Faridabad vs., DCIT, Circle-1, Faridabad, Dated 04.10.2019 in ITA.No.4747/Del/2016 in which the Tribunal following the decision of Hon'ble Delhi High Court as well as Hon'ble Supreme Court, have cancelled the penalty on identical facts.

4. The Ld. D.R. on the other hand relied upon the Orders of the authorities below and submitted that this point have not been raised by assessee and essentially it is an issue of fact, therefore, this ground cannot be considered in favour of the assessee and relied upon Order of ITAT, Delhi G-Bench in the case of Mr. Vijay Aggarwal, Meerut vs., DCIT, Central Circle-1, Faridabad, Dated 09.08.2019 in ITA.Nos.5434 & 5435/Del./2016 for the A.Ys. 2008-2009 and 2009-2010.

5. We have considered rival submissions and perused the material on record. The contents of the notice issued before levy of the penalty are reproduced above which clearly show that A.O. has not mentioned as to for which limb of Section 271(1)(c) of the I.T. Act penalty proceedings have been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The ITAT, Delhi C-Bench in the case of Shri Gulshan Kumar Jhurani, New Delhi vs., ACIT, Circle-37(1), New Delhi (supra), considering the Judgment of 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.) and Hon'ble Supreme Court in the case of M/s. SSA Emerald Meadows reported in 73 taxmann.com 248 (SC) set aside the Orders of the authorities below in same circumstances and cancelled the penalty. The Order is reproduced as under :

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

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

*ITA.No.704/Del./2015  
Assessment Year 2010-2011*

|   |             |   |
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| <i>Shri Gulshan Kumar<br/>Jhurani, B-226A, Greater<br/>Kailash Part-1, New Delhi.<br/>PIN – 110 048.<br/>PAN ACHPJ2336H</i> | <i>vs.,</i> | <i>The ACIT,<br/>Circle – 37 (1),<br/>New Delhi.<br/>PIN – 110 001.</i> |
| <i>(Appellant)</i>  |             | <i>(Respondent)</i>   |

|                       |                                 |
|-----------------------|---------------------------------|
| <i>For Assessee :</i> | <i>Shri Ashwani Kumar, C.A.</i> |
| <i>For Revenue :</i>  | <i>Shri S.S. Rana, CIT-D.R.</i> |

|                                |                   |
|--------------------------------|-------------------|
| <i>Date of Hearing :</i>       | <i>03.10.2019</i> |
| <i>Date of Pronouncement :</i> | <i>04.10.2019</i> |

**ORDER**

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

*This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-XX, New Delhi, Dated 19.11.2014 for the A.Y. 2010-2011, 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 and perused the material on record.*

3. *The assessee in the present appeal has challenged the levy of penalty under section 271(1)(c) of the I.T. Act. The assessee also raised additional ground of appeal stating therein that levy of the penalty is unjustified because A.O. has not specified whether penalty have been levied for concealment of particulars of income or furnishing inaccurate particulars of income. 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 28.03.2013 which was issued*

*for levy of 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, therefore, 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.”*

5.1. Same view have been taken by ITAT, Delhi C-Bench in the case of Hemla Embroidery Mills Private Ltd., Faridabad vs., DCIT, Circle-1, Faridabad (supra). In the present case, assessee has raised a specific ground of appeal that A.O. has miserably failed to point-out exactly under which limb of Section, the impugned penalty proceedings have been initiated and for want of which, the present penalty have become invalid. Therefore, we are of the view that the contention of the Ld. D.R. has no merit and is accordingly rejected. Following the above decisions, we are of the view that since the impugned show cause notices issued by the A.O. are bad in law, therefore, 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.

6. 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 11<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.