

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.241/Del/2017  
Assessment Year: 2007-08

**And**

ITA No.242/Del/2017  
Assessment year: 2009-10

**And**

ITA No.243/Del/2017  
Assessment Year: 2010-11

**And**

ITA No.244/Del/2017  
Assessment Year: 2011-12

M/s. Oriental Structural Engineers Pvt. Ltd., OSE Commercial Block, Hotel Aloft, Asset 5B, Aero City, Hospitality District, IGI Airport, New Delhi	<b>Vs.</b>	DCIT, Cent. Circle-26, New Delhi
<b>PAN :AAACO0054F</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**And**

ITA No.272/Del/2017  
Assessment Year: 2012-13

**And**

ITA No.273/Del/2017  
Assessment Year: 2013-14

M/s. Oriental Structural Engineers Pvt. Ltd., OSE Commercial Block, Hotel Aloft, Asset 5B, Aero City, Hospitality District, IGI Airport, New Delhi	<b>Vs.</b>	ACIT, Central Circle-26, New Delhi
<b>PAN :AAACO0054F</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri K.V.S.R. Krishna, CA & Shri Aman Goel, CA
Department by	Shri K. Hauthang, Sr.DR

Date of hearing	25.09.2019
Date of pronouncement	17.10.2019

## **ORDER**

### **PER BENCH:**

These appeals by the assessee are directed against two separate orders dated 03/10/2016 and dated 09/11/2016 passed by the Ld. Commissioner of Income-tax (Appeals) for assessment years 2007-08; 2009-10; 2010-11 & 2011-12 and 2012-13 & 2013-14 respectively. As common issue of levy of penalty under section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') is involved in all the six appeals, same were heard together and disposed off by way of this common order for sake of convenience and avoid repetition of facts.

**2.** Before us, the assessee has raised an additional ground in all the six appeals challenging the assumption of jurisdiction for levy penalty as under:

*“Whether the penalty is for concealment of income or furnishing of inaccurate particulars of income is not evident from the notice nor from the penalty order. Penalty provisions being quasi-judicial, unless there is specific charge, there cannot be any levy of penalty. Therefore, the order levying penalty is wrong and bad in law.”*

**2.1** The assessee enclosed copy of notices issued for levy penalty in all the six assessment years and submitted that additional ground of the assessee might be admitted.

**2.2** We have heard the submission of the parties on the admissibility of additional ground raised. We find that the ground raised is a legal ground based on material already existing on record and no investigation of new facts or material is required for adjudicating the additional ground raised. In view of the law settled by the Hon'ble Supreme Court in the case of **NTPC Vs. CIT, 229 ITR 383**, we admit that additional grounds raised by the assessee in all the six appeals.

**3.** In support of the additional ground raised, the Ld. counsel of the assessee submitted that notice(s) issued by the Assessing Officer for levy of the penalty are vague as far as charges of levy of the penalty is concerned. He submitted that it was not evident from the notices, as to whether the penalty is for concealment of income or furnishing inaccurate particulars of the income. He submitted that in view of the no specific charge in the notice issued, the assumption of jurisdiction by the Assessing Officer is invalid and, thus, penalty levied is liable to be cancelled in view of the decision of the Hon'ble Karnataka High Court in the case of **CIT vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Kar.)** and Hon'ble Supreme Court in the case of **CIT v. SSA'S Emerald Meadows Vs. CIT, (2016) 73 taxman.com 248 (SC) / dated 23.11.2015 (ITA 380/2015)**.

**4.** The Ld. DR, on the other hand, submitted that the Assessing Officer has levied penalty on charges of concealment of the income

only, which is evident from the impugned orders passed by the Assessing Officer. He, accordingly, submitted that order passed by the learned CIT(A) might be sustained.

**5.** We have heard the rival submission of the parties on the issue in dispute in the light of the material available on record. We find that Hon'ble Karnataka High Court in the case of **Manjunatha Cotton and Ginning Factory** (supra ) held that no penalty under section 271(1)(c) of the Act can be levied in absence of specific mention of charges either of concealment of income or filing of inaccurate particulars of the income. In the case of **SSA'S Emerald Meadows** (supra), the Hon'ble Supreme Court has also dismissed the SLP of the Department challenging levy penalty in case of no specific charges.

**6.** From perusal of the notices issued for the six assessment years under section 274 read with section 271(1)(c) of the Act, we find that the charges mentioned are as under :

*“have concealed the particulars of your income or furnish inaccurate particulars of such income in terms of explanation 1, 2, 3, 4 and 5. “*

**7.** It is evident that the Assessing Officer has not specified for which charge, the penalty was being proposed for levy. While initiating the penalty proceedings in the assessment order also, the Assessing Officer did not specify the charges and simply mentioned that the assessee has concealed its income and/or filed inaccurate particulars of its income. In view of the above facts and circumstances, prior to levy of the penalty, the specific charges

were not communicated to the assessee and therefore, the Assessing Officer is not justified in penalizing the assessee in view of the decision of the Hon'ble Karnataka High Court in the case of **Manjunatha Cotton and Ginning Factory** (supra) and the decision of the Hon'ble Supreme Court in the case of **SSA'S Emerald Meadows** (supra). Accordingly, the order of the learned CIT(A) in all the six assessment years are set aside and the penalty levied by the Assessing Officer is cancelled in all the six assessment years. The additional ground raised by the assessee is allowed. As we have already cancelled the penalty in dispute, the grounds of appeal of the assessee are not required to be adjudicated.

**8.** In the result, the appeals filed by the assessee for all the six assessment years are allowed.

***Order is pronounced in the open court on 17<sup>th</sup> October, 2019.***

**Sd/-**  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 17<sup>th</sup> October, 2019.

RK/-(D.T.D.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi