

**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. 5432/Del/2016 : Asstt. Year : 2006-07

ITA No. 5433/Del/2016 : Asstt. Year : 2007-08

Mr. Vijay Agarwal, C/o M/s Kashyap & Co., CAs, 214, Citi Centre, Begum Bridge Road, Meerut-250001	Vs	Deputy Commissioner of Income Tax, Central Circle-1, Faridabad
(APPELLANT)		(RESPONDENT)
PAN No. AAZPA6461C		

Assessee by : Sh. P. S. Kashyap, CA

Revenue by : Sh. N. K. Bansal, Sr. DR

Date of Hearing: 26.08.2019

Date of Pronouncement: 05.11.2019

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of the Id. CIT(A)-3, Gurgaon dated 16.08.2016.

2. Since, the issues involved in both the appeals are common, they were heard together and are being disposed off by common order.

3. In ITA No. 5432/Del/2016, following grounds have been raised by the assessee:

"1. That on facts and in law imposition of penalty under section 271(1)(c) for Rs.42,910/- is totally wrong, unjustified and illegal. The appellant is not

liable to penalty u/s 271(1)(c) on the following grounds:

- i) That the Id. CIT (A) has not considered the various facts before passing the order.*
- ii) That assessee had bona fide reasons for claiming deduction u/s 24 and section 80C of the Act.*
- iii) That the Id. A.O. has not specified that under which limb he is initiating the penalty proceedings i.e. for concealment of income or for furnishing of inaccurate particulars of income.*

Therefore, the basis taken and method adopted by the assessing officer for imposing penalty u/s 271(1)(c) for Rs.42,910/- and confirmed by CIT(A) is totally wrong, unjustified and unwarranted and the same deserves to be deleted in full."

4. The matter involving the similar issue in the case of the assessee for the assessment years 2008-09 and 2009-10 in ITA Nos. 5434/Del/2016 and 5435/Del/2016 was adjudicated by the Co-ordinate Bench of ITAT vide order dated 09.08.2009. The appeal of the assessee has been dismissed after considering the submissions of the assessee and referring the judgments of the Hon'ble High Court of Karnataka in the case of Manjunatha Cotton & Ginning Factory and the decision of the Supreme Court in the case of SSA's Emerald Meadows. It was held that the plea pertaining to specifying under which limb of section, the penalty proceedings have been initiated has never been raised before the First Appellate Authority and has been raised for the first time before the Tribunal (para 16). Further it was held that neither the assessee has moved in an application for raising any additional ground nor he has been able to bring out any question of law which can be raised before the Appellate Authority for the first time (para 17).

5. During the arguments before us, the assessee has taken up at ground no. 3 that the Assessing Officer has not specified that under which

limb he is initiating the penalty proceedings i.e. for concealment of income or for furnishing of inaccurate particulars. Further, the Ld.AR brought to our notice that the case is squarely covered by the order of the jurisdictional high court in the case of CIT Vs. Sahara India Life Insurance ltd in ITA No. 475/2019 dated 02.08.2019. It was argued that the decision of the Karnataka High Court in CIT vs. Manjunatha Cotton & Ginning Factory 359 ITR 565 has been reiterated in the judgment of the Jurisdictional High Court. The Hon'ble High Court while dealing this issue at para no. 21 has 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 vs. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) and observed that the notice issued by the Assessing Officer 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 vs. 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 f 2016 by order dated 5th August, 2016."

6. Ld. DR relied on the judgments in the case of Sundaram Finance Ltd. vs. CIT [2018] 99 taxmann.com 152 (SC), Sundaram Finance Ltd. vs. CIT [2018] 93 taxmann.com 250 (Madras)/[2018] 403 ITR 407 (Madras), CIT vs. Smt. Kaushalya [1994] 75 Taxman 549 (Bombay)/[1995] 216 ITR 660 (Bombay) and other cases filed along with the written submission.

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

8. We find that, while passing the assessment order, the Assessing Officer held as under:

"Issue requisite documents. Charge interest u/s 234A, B & C as applicable. Issue penalty notice u/s 271(1)(c)."

9. In the notice u/s 274 read with section 271 of the Income Tax Act, 1961/271(1)(c) read with explanation 5 of the I.T. Act, 1961 issued by the Assessing Officer on 28.12.2011, the Assessing Officer has not specified under which limb the penalty is being proposed. It reads as under:

*"*have concealed the particulars of your income or.....furnished inaccurate particulars of such income."*

10. In the penalty order, the Assessing Officer mentioned as under:

"In view of the above, and taking into consideration of the facts and circumstances of the case, it is a fit case for imposition of penalty. I find it reasonable to impose a minimum penalty of Rs. 42,910/- be 100% of the tax sought to be evaded as per the calculation given below."

11. Thus, we find that the Assessing Officer has not mentioned under which limb of the section 271 (1)(c) the penalty is being initiated. In the notice issued U/s 274, the Assessing Officer has not specified that under which limb he is initiating the penalty proceedings i.e. for concealment of income or for furnishing of inaccurate particulars of income. Similarly even the penalty order do not specify under which limb the penalty is being levied penalty order.

12. Keeping in view of the facts narrated above and the judgment of the jurisdictional high court in the case of CIT Vs. Sahara India Life Insurance ltd (Supra), we hereby direct the penalty levied by the Revenue be obliterated.

13. In the result, both the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 05/11/2019

Sd/-

(Amit Shukla)
Judicial Member

Dated: 05/11/2019

Kavita Arora

Sd/-

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

Copy forwarded to:

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

ASSISTANT REGISTRAR