

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 2699/DEL/2007 [A.Y 1998-1999]

ITA No. 2934/DEL/2009 [A.Y 2000-2001]

ITA No. 19/DEL/2008 [A.Y 1999-2000]

M/s Vikram Bakshi & Company
Top Floor, Mohan Dev
545, Ameer Road
Badhwali Gali, Meerut

Vs.

The A.C.I.T
Circle 12(1)
New Delhi

PAN: ABEPW 2480 P

(Applicant)

(Respondent)

Assessee By : Shri Rohit Jain, Adv
Shri Deepesh Jain, CA
Shri Vibhu Gupta, CA

Department By : Shri S.N. Meena, Sr. DR

Date of Hearing : 09.12.2019

Date of Pronouncement : 10.12.2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above three separate appeals by the assessee are preferred
against separate orders of the Commissioner of Income Tax [Appeals] -

Delhi pertaining to assessment years 1998-99, 1999-2000 and 2000-01. Since all these appeals were heard together and involve common grievance, these are being disposed of by this common order for the sake of convenience and brevity.

2. The common grievance relates to the levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act']. In Assessment Year 1998-99 returned income of Rs. 12,04,065/- was assessed at Rs. 24,05,527/-, in Assessment Year 1999-2000 returned income of Rs. 57,79,765/- was assessed at Rs. 90,43,038/- and in Assessment Year 2000-01 returned income of Rs. 41,57,521/- was assessed at Rs. 1,07,68,310/-.

3. In all the Assessment Years, the additions have been made on account of disallowance of interest on borrowed capital and while making disallowances, the Assessing Officer recorded his satisfaction as *“The assessee has concealed/furnished inaccurate particulars of its income. For that, penalty proceedings u/s 271(1)(c) of the Act has been initiated separately.”*

4. While issuing notice u/s 274 r.w.s 271 of the Act, again the Assessing Officer did not specify whether the penalty has been levied for concealment of income or for filing inaccurate particulars of income. We are of the considered view that in such a case, where neither the assessment order is clear as to under which limb penalty is levied, i.e. for concealment of income or for furnishing of inaccurate particulars of income nor the notice issued u/s 274 of the Act specifies the same, penalty levied in pursuance of such conduct of the Assessing Officer cannot be upheld. For this proposition, we draw support from the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of Sahara India Life Insurance Company 475/2015 & Others and connected matters.

5. Relevant findings of the Hon'ble High Court read 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 359ITR 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.1 1485 of 2016 by order dated 5th August, 2016.

On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises."

6. Respectfully following the findings of the Hon'ble Jurisdictional High Court [supra] we direct the Assessing Officer to delete the penalty so levied u/s 271(1)(c) of the Act.

7. Before parting, the ld. DR through its written submissions has relied upon various judicial decisions of various High Courts, but none of the decisions is directly on the point of issue of such notices where it is not clear under which default the penalty is being levied. Therefore, the decisions relied upon by the ld. DR are of no consequence.

8. In the result, all the three appeals of the assessee in ITA Nos. 2699/DEL/2007, 2934/DEL/2009 and 19/DEL/2008 are allowed.

The order is pronounced in the open court on 10.12.2019.

Sd/-

Sd/-

[KULDIP SINGH]
JUDICIAL MEMBER

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 10th December, 2019

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	