

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

**Before Sh. H. S. Sidhu, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 4374/Del/2016 : Asstt. Year : 2009-10**

Carrymore Hoists Pvt. Ltd., Plot No. 256, Sector-24, Faridabad	Vs	Asstt. Commissioner of Income Tax, Circle-II, Faridabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACC6652K</b>		

**Assessee by : Sh. Rajneesh Behari Mathur, CA**

**Revenue by : Sh. Saras Kumar, Sr. DR**

**Date of Hearing: 19.12.2019**

**Date of Pronouncement: 04.02.2020**

**ORDER**

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

The present appeal has been filed by the assessee against the order of Id. CIT (A), Faridabad dated 26.05.2016.

2. Following grounds have been raised by the assessee:

*"1. That on the facts and the circumstances of the case the Id. CIT(Appeals), Faridabad was not justified in confirming the penalty u/s 271(1)(c) of the Income Tax Act, 1961 of Rs.1,50,660/-."*

3. The assessee further filed revised grounds of appeal which are as under:

*"1. That on the facts and circumstances of the case the imposition of Penalty of Rs.1,50,660/- is Bad In Law as the Notice for imposition of Penalty dated 09-02-2015 with reference to which the penalty was imposed did not specify the "Charge against the assessee" i.e. whether the penalty was proposed to be levied for "furnishing of inaccurate particulars" or for "concealment of income". Further even the first notice of penalty dated 29-12-2011 which was issued at the time of the*

*framing of the assessment order was illegal as it proposed to levy the penalty under section 271(1)(c) for both the limbs of the Section 271(1)(c) i.e. for having concealed the particulars of income and also for furnishing of inaccurate particulars of income.*

*2. Without prejudice to the Ground No.1 even on merits the assessing officer was not justified in imposing the penalty under section 271(1)(c) as the assessee neither concealed any particular of its income nor furnished inaccurate particulars thereof to warrant the imposition of penalty under section 271(1)(c).*

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

5. The brief facts of the case are that the appellant filed its return of income declaring total income of Rs.1,09,38,181/-. As per order u/s 143(3) of the Act dated 29.12.2011, the income was assessed at Rs.1,99,41,790/- after making addition on account of sundry creditor. We find that at the conclusion of assessment proceedings, the Assessing Officer has held at para 7 that "penalty proceedings u/s 271(1)(c) have been initiated and penalty notice is issued separately which is enclosed."

6. We also find that the penalty notice issued on 09.02.2015 by the ACIT, Circle-II, Faridabad in connection with the proceedings u/s 271(1)(c) of the Act r.w.s. 274 of the Act for relevant assessment year has not specified under which limb of the provision u/s 271(1)(c) of the Act, the penalty is being initiated. For ready reference, the relevant portion of the notice issued u/s 274 is reproduced as under:

GOVERNMENT OF INDIA  
INCOME TAX DEPARTMENT  
OFFICE OF THE ASSTT. COMMISSIONER OF INCOME TAX,  
CIRCLE-II, NEW CGO COMPLEX, NH IV, FARIDABAD - 121001  
(0129)2415300(Direct)

F.No. ACIT/C-II/Fbd./14-1 5/728/5611

Dated: 09.02.2015

To,

The Principal Officer,  
M/s Carrymore Hoists Pvt. Ltd.,  
PlotNo.256, Sector- 24,  
Faridabad

Sir / Madam,

Sub: Penalty proceeding under section 271(1)(c) of the I.T. Act for the Assessment Year 2009-10 - Opportunity of being heard under the provisions of section 275 (1)(a) of the Act - Regarding.

\*\*\*\*\*

Please refer to the assessment order passed u/s 143(3) of the I.T. Act, 1961 for the captioned assessment year and penalty proceedings initiated u/s 271(1)(c) therewith, in pursuance to your submissions regarding filing of appeal against the assessment order with Ld. CIT(A), Faridabad, the penalty proceedings initiated were kept in abeyance till the disposal of appeal by Ld. CIT(A), Faridabad. The Ld. CIT(A), has since adjudicated upon and passed order on the appeal filed by you in appeal No.300/2011-12 vide order dated 16.01.2014.

2. The Ld. CIT(A), Faridabad has partly allowed / dismissed the appeal filed by you in appeal No.300/2011-12 vide order dated 16.01.2014 . In view of the above you are hereby provided a another opportunity to show cause as to how the penalty u/s 271(1)(c) for furnishing in accurate particulars of income / concealment of income may not be levied on you. In this regard the hearing is fixed in the office of undersigned at **12.15 P.M. on 17.02.2015**. It is requested that;

- i) You may either attend personally or through an authorized representative and file a written reply / explanation / evidence in this regard in this office on or before the said date.
- ii) If you have already filed any reply, please file a copy of the same.
- iii) Please note that limitation is involved in the proceedings and it will not be possible to allow any further adjournment or opportunity, and
- iv) In case no response is received on or before the date fixed, the proceedings will be finalized on merits on the basis of material available on record.

Yours faithfully,  
Sd/-

(Nirmal Nangia)

Asstt. Commissioner of Income Tax,  
Circle-II, Faridabad

7. Further, while levying penalty u/s 271(1)(c), the Assessing Officer at para no. 7 held that "I impose minimum penalty of Rs.1,50,660/- upon the assessee u/s 271(1)(c) of the Income Tax Act, 1961".

8. The Id. AR brought to our notice, the judgment of the Hon'ble Jurisdictional High Court in the case of Sahara India Life Insurance Company Ltd. in ITA No. 426/2019 dated 02.08.2019 wherein the Hon'ble High Court 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."*

9. He also relied on the judgment of SSA's Emerald Meadows 73 Taxman 248.

10. Against the arguments of the Id. AR, the Departmental Representative heavily relied on the judgment of Sundaram Finance Ltd. Vs CIT (2018) 403 ITR 407 (Madras) and argued that the Hon'ble High Court held that where notice did not show the nature of default, it was a question of fact. The assessee has understood purport and import of the notice, hence, no prejudice was caused to the assessee.

11. We have gone through the facts of the case and find that the Assessing Officer has not made it clear under which limb of the provisions of Section 271(1)(c) of the Act, the penalty is being levied. There is

glaring discrepancy between initiation of the penalty and levy of penalty. Hence, respectfully following the judgment of the Hon'ble Jurisdictional High Court, we hereby hold that the penalty levied by the Assessing Officer cannot be held be valid in the eyes of law.

12. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 04/02/2020.

Sd/-

**(H. S. Sidhu)**  
**Judicial Member**

**Dated: 04/02/2020**

\*Subodh\*

Copy forwarded to:

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

Sd/-

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

**ASSISTANT REGISTRAR**