

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B+SMC": NEW DELHI**

**BEFORE  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.7198/Del/2018  
Asstt. Year: 2014-15

Dinesh Chand Tyagi, S/o. Shanti Sharan Tyagi, 720/1, Indira Colony, Roorkee Road, Near Sharanpur Bus Stand, Tyagi Complex, Muzaffarnagar Uttar Pradesh Pin 251001 PAN ADSPT5325Q	Vs.	ACIT Circle-1 Muzaffarnagar
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	None
Department by :	Shri Umesh Takyar, Sr. DR
Date of Hearing	30/10/2019
Date of pronouncement	27/01/2020

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal is preferred by the assessee against order dated 27.8.2018 passed by the Ld. Commissioner of Income Tax (Appeals), Muzaffarnagar {CIT(A)} for assessment year 2014-15

wherein the Ld. CIT (A) has upheld the imposition of penalty of Rs. 1,00,200/- imposed u/s 271(1)(c) of the I.T. Act, 1961 (hereinafter called the 'Act') .

2.0 The brief facts of the case are that in this case the return of income was filed declaring a total income of Rs. 12,46,460/-. The case was selected for scrutiny through CASS and the assessment was completed u/s 143(3) of the Act after making an addition of Rs. 3,24,000/- on account of cash deposited in bank allegedly remaining unexplained. Subsequently, penalty u/s 271(1)(c) of the Act to the tune of Rs. 1,00,200/- was imposed which was upheld by the Ld. CIT (A). Now the assessee has approached this Tribunal (ITAT) and has challenged the upholding of penalty by the Ld. CIT (A).

3.0 None was present on behalf of the assessee when the appeal was called out for hearing. However an application for adjournment was received. A perusal of the order sheet entries shows that this appeal was earlier fixed for hearing on 11.4.2019 and 16.7.2019 and on both these occasions the assessee was not represented. Looking into the facts of the case, we reject the

application praying for adjournment and proceed with the hearing of the appeal *ex parte qua* the assessee.

4.0 The Ld. Sr. DR submitted that the penalty had rightly been imposed although the assessee in his ground of appeal has challenged that the notice issued u/s 274 of the Act was bad in law because the charge for which the penalty was initiated had not been specifically indicated in the notice issued u/s 274. The Ld. Sr. DR placed reliance on the judgment of Hon'ble Madras High Court in the case of Sundaram Finance Ltd. vs. CIT (2018) 403 ITR 407 (Madras) and submitted that the Hon'ble Madras High Court has held that where the notice did not show the nature of default, it was only the question of fact. It was submitted that the Hon'ble Madras High Court had held that where the assessee had understood the purport and import of notice, no prejudice was caused to the assessee. Reliance was also placed on some other decisions of the ITAT in which a similar proposition had been laid down.

5.0 We have heard the submissions of the Ld. Sr. DR and have also perused the orders of the lower authorities. It is seen from the records that notice u/s 274 of the Act has been issued in

which the assessee had been called upon to explain why penalty u/s 271(1)(c) of the Act should not be imposed for concealing the particulars of income or for furnishing inaccurate particulars of income. Thus, the notice specifies both the charges for which the penalty proceedings were being initiated. In the penalty order also the AO has imposed penalty under both the limbs of the Act. This issue has since been laid to rest by the judgment of Hon'ble Karnataka High Court in the case of CIT vs Manjunatha Cotton & Ginning Factory reported in (2013) 359 ITR 565/218. Very recently the Hon'ble Delhi High Court has also approved this judgment in the case of Sahara India Ltd. wherein it has been laid down that the notice u/s 274 of the Act should specifically state under what limb of section 271(1)(c) the penalty being proposed to be imposed. The judgment of Karnataka High Court has also laid down that sending printed form where all the grounds mentioned in section 271 are mentioned would not meet the requirement of law as the assessee should know the grounds which he has to meet specifically. Accordingly, in view of the settled legal position, we are of the considered opinion that in absence of the striking of the irrelevant portion in the notice issued u/s 274 and without specifying under which limb the penalty was being proposed to be

imposed, the resultant penalty would be bad in law. Accordingly, we set aside the order of the Ld. CIT (A) and direct the AO to delete the penalty.

6.0 In the final result the appeal of the assessee stands allowed.

**Order pronounced in the open court on 27<sup>th</sup> January, 2020.**

**Sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 27/ 01/2020

***Veena***

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi