

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.465/Del./2017
Assessment Year 2012-2013

ABR Auto Pvt. Ltd., B-5, Chirag Enclave, New Delhi – 110 048. PAN AADCA5137C	vs.	The ACIT, Circle – 1 (1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Amarjeet Singh, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	05.02.2020
Date of Pronouncement :	05.02.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-I, New Delhi, Dated 22.11.2016, for the A.Y. 2012-2013, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. The A.O. disallowed interest income and electricity expenses and initiated the penalty proceedings under section 271(1)(c) of the I.T. Act, 1961 on 27.02.2015

that is the date of the passing of the assessment order. The A.O. vide separate Order levied the penalty under section 271(1)(c) of the I.T. Act, which is confirmed by the Ld. CIT(A).

3. We have heard the Learned Representative of both the parties and perused the material available on record.

4. The Learned Counsel for the Assessee filed copy of the show cause notice under section 274 read with section 271(1)(c) of the I.T. Act Dated 27.02.2015 at page-74 of the PB which was issued before levy of the penalty in which the A.O. has mentioned :

“Have concealed the particulars of your income or furnished inaccurate particulars of such income.”

4.1. The notice, thus, would show that A.O. was not satisfied as to for which limb of Section 271(1)(c) of the I.T. Act, the penalty proceedings have been initiated, whether for concealment of particulars of income or furnishing

inaccurate particulars of income. Therefore, notice is *void abinitio* and levy of penalty is unjustified. He has further submitted that similar matter was considered by the ITAT, Delhi Bench in the case of same assessee for the A.Y. 2009-2010 and appeal of assessee have been allowed in ITA.No.6236/Del./2015, Dated 04.12.2017 in which the Tribunal held as under :

6. *We have carefully considered the rival submissions and perused the relevant records. We find that assessee had appealed before the Ld. CIT(A) against the quantum additions i.e. disallowance u/s. 14A amounting to Rs. 4,07,158/- and disallowance on account of long term capital loss treated as business income amounting to Rs. 91,39,000/-. However, the assessee did not press for other disallowances made on account of Bad Debts of Rs. 1,32,000/- and Disallowance of Expenses on account of return of investment of Rs. 10,84,005/-. We further find that in his appellate order dated 01.2.2013 the Ld. CIT(A) did not allow the appeal of the assessee and aggrieved with the action of the Ld. CIT(A), te assessee appealed before the Tribunal against*

disallowance u/s. 14A of Rs. 4,07,158/- and against Long Term Capital Loss treated as Business income of Rs. 91,39,000/- and the ITAT vide its order dated 5.8.2016 in ITA No. 2375/Del/2013 had set aside the finding of the Ld. CIT(A) on the issue u/s. 14A and restore the matter to the file of the AO for fresh adjudication after due verification of the claim of the assessee regarding no expenditure having been incurred and allowed the issue relating to Long Term Capital Loss treated as Business income of Rs. 91,39,000/- by deleted this addition. We further note that during the penalty proceedings, the AO vide his order dated 31.3.2014 imposed penalty of Rs. 36,58,000/- u/s. 271(1)(c) of the Act, in respect of all the four additions of Rs. 1,07,62,163/- mentioned in the grounds of appeal, as aforesaid, on the alleged ground that the assessee had furnished inaccurate particulars of income.

6.1 After perusing the assessment order, we find that AO also did not record his satisfaction for initiation of penalty proceedings, because while passing the assessment order dated 30.12.2011 passed u/s.

143(3)(ii) of the Act, the AO has stated that ".... Penalty proceedings u/s. 271(1)© is being initiated separately for furnishing inaccurate particulars of income / concealment income.....", which is not sufficient and therefore, the penalty proceedings cannot be said to be validly initiated under such circumstances. However, nowhere in the assessment order states the specific charge of alleged concealment and / or furnishing of inaccurate particulars of income. Therefore, the entire penalty proceedings stand vitiated, because it is not in accordance with law, in view of the law settled in the following case laws.

- i) "CIT & Anr. Vs. M/s SSA's Emerald Meadows - 2015 (11) TMI 1620 - Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© of the Act, the penalty proceedings had been initiated i.e., whether for concealment of*

particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of Commissioner of Income Tax vs. Manjunatha Cotton and Ginning Factory (2013) (7) TMI 620- Karnataka High Court. Thus since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion no substantial question of law arises – decided in favour of assessee.”

- ii) *CIT & Anr. Vs. M/s SSA’s Emerald Meadows – Hon’ble Supreme Court of India – reported in 2016 (8) TMI 1145 – Supreme Court. The Apex Court held that High Court order confirmed (2015) (11) TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© of*

the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income – Decided in favour of assessee.”

6.2 *In the background of the aforesaid discussions and respectfully following the precedents, we delete the penalty in dispute and decide the issue in favor of the assessee and against the Revenue. Since we have deleted the penalty and did not discuss the penalty issue on merit, hence, the case laws cited by the Ld. DR are not useful at this juncture, because these case laws are on the merits of the case, which we have not discussed.*

7. *In the result, the appeal filed by the Assessee stands allowed”.*

5. The Ld. D.R. did not dispute the same.

6. Considering the above facts, we find that issue is covered in favour of the assessee by the above Order of the

Tribunal. Following the same, we set aside the Orders of the authorities below and cancel the penalty.

7. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 05th February, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.