

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

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

ITA No. 2224/Del/2017
(Assessment Year: 2010-11)

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| Shri Dinesh Chandra Jaiswal, 25A/2A, Om Purwa, Lal Bangla, Kanpur. PAN : AEDPJ9386B | Vs. | ACIT, Central Circle – 17, New Delhi. |
| (Appellant) | | (Respondent) |

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| Revenue by : | N O N E; |
| Assessee by: | Shri M. L. Jain, Adv.; |
| Date of Hearing | 06/11/2019 |
| Date of pronouncement | 03/02/2020 |

ORDER

PER PRASHANT MAHARISHI, A. M. :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-28, New Delhi, dated 09.02.2017 for assessment year 2010-11 and assessee aggrieved has filed this appeal.

The only issue in this appeal is confirmation of penalty under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) amounting to Rs.2,12,130/-.

2. The brief facts of the case is that assessee is an individual having income under the head 'business', filed his return of income on 30.03.2013 showing income of Rs.5,37,710/-. The case of the assessee was picked up for scrutiny.

The assessment under section 144 of the Act was passed on 28.03.2013 wherein several additions were made and income of the assessee was determined at Rs.19,20,938/-. The Assessing Officer separately initiated the penalty under Section 271(1)(c) of the Act holding that the disallowance so made amounts to concealment of income / furnishing inaccurate particulars. Thus the penalty was initiated. Against the assessment order assessee preferred appeal before the learned CIT (Appeals) who deleted the addition of Rs.5,20,000/-. He, however, confirmed the other addition. The additions confirmed were as under:

- (i) Rs.35,100/- on disallowance of depreciation;
- (ii) Rs.44,874/- on disallowance of 50% of the expenditure;
- (iii) Rs.5,22,787/- on account of un-disclosed business receipts.

2.1 After the order of the learned CIT (Appeals) assessee did not prefer any appeal at higher forum. Therefore, the Assessing Officer re-commenced the penalty proceedings, which was not replied by assessee. Therefore, the learned Assessing Officer passed penalty order under section 271(1)(c) of the Act on 18.03.2016 leaving a minimum penalty of Rs.2,12,130/-. In the penalty order the Assessing Officer has stated that it is clear that since the assessee has filed inaccurate particulars in his return of income with the clear-cut intention of concealment of income it is a fit case for levy of the penalty the assessee has concealed his income by way of furnishing of inaccurate particulars of his income.

2.2 The above order was challenged before the learned CIT (Appeals) who dismissed the appeal of the assessee on the merits of the addition and confirmed penalty order passed by AO.

The assessee aggrieved with the order of the learned CIT (Appeals) has preferred this appeal.

3. The learned Authorized Representative submitted that in the order of the assessment, in the show cause notice issued under section 274 of the Act on

28.3.2016 the learned Assessing Officer has not stuck off any of the twin charges and further in the penalty order also the Assessing Officer has not specified one of the charges of penalty under Section 271(1)(c) of the Act, thus penalty order confirmed by the learned CIT (Appeals) is invalid. He referred to the decision of Hon'ble Karnataka High Court in CIT Vs. M/s. SSA'S Emerald Meadows (2015) 11 TMI 1620 (Kar.) which was confirmed by the Hon'ble Supreme Court in (2016) 73 Taxman.com 248 (SC).

3.1 The learned Departmental Representative requested for the adjournment by filing the application. However, he was not present in the court to accept the date.

3.2 The learned [CIT]-DR also did not have any idea about the learned Senior Departmental Representative. The reasons for adjournment are also that as he has joined recently, he wanted some more time for the preparation of the case. As the issue involved is squarely covered in favour of the assessee by the jurisdictional High Court on this issue, we reject the adjournment application of the Revenue.

4. On careful consideration of the notice issued under section 274 of the Act on 28.03.2013, it is apparent that the Assessing Officer has not stuck off any of the twin charges. In the assessment order also in para No. 12 (ii) the Assessing Officer has initiated penalty proceedings, for concealing the particulars of income as well as furnishing of inaccurate particulars of income. Further in the penalty order also he levied the penalty on both the charges, in the last para before the computation of total income. Though the above issue was raised before him, citing the decision of Hon'ble Bombay High Court, CIT (Appeals) did not adjudicate on it, but confirmed the penalty on the additions confirmed. The Hon'ble Delhi High Court after considering the decision of the Hon'ble Karnataka High Court in para No. 21 of its order in ITA. No. 475/2019 in Pr. Commissioner of Income Tax Vs. Sahara India Life Insurance Co. Ltd. Dated 02.08.2019 has held that such penalty cannot be sustained if the show cause notice did not specify on which limb of Section 271(1)(c) of the Act the penalty has been initiated. In view of this, we direct the learned Assessing Officer to cancel the penalty levied under Section

271(1)(c) of the Act of Rs.2,12,130/-. The orders of the lower authorities are reversed and appeal of the assessee is allowed.

Order pronounced in the open court on : 03/02//2020.

**Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : 03/02/2020.

MEHTA

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT, New Delhi

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| Date of dictation | 03/02/2020 |
| Date on which the typed draft is placed before the dictating member | 03/02/2020 |
| Date on which the typed draft is placed before the other member | 03/02/2020 |
| Date on which the approved draft comes to the Sr. PS / PS | 03/02/2020 |
| Date on which the fair order is placed before the dictating member for pronouncement. | 03/02/2020 |
| Date on which the fair order comes back to the Sr. PS / PS | 03/02/2020 |
| Date on which the final order is uploaded on the website of ITAT | 03/02/2020 |
| Date on which the file goes to the Bench Clerk | 03/02/2020 |
| 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 | |