

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC-2' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 2886/DEL/2019
[Assessment Year: 2010-11]

Vinayak Remedies Ltd
1141/1, 16, Behind Bagga Link
Service Station, Rithala,
New Delhi

Vs.

The A.C.I.T.
Circle 26(2)
New Delhi

PAN: AACCV 3031 F

[Appellant]

[Respondent]

Date of Hearing : 12.03.2020
Date of Pronouncement : 12.03.2020

Assessee by : None

Revenue by : Shri Senkar Navkor, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 24, dated 23.01.2019 pertaining to assessment year 2010-11.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the penalty levied by the Assessing Officer u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'].

3. Roots for levy of penalty lie in the assessment order dated 18.03.2013 framed u/s 143(3) of the Act.

4. The returned loss of Rs. 66.92 lakhs was assessed at a profit of Rs. 12.57 lakhs after making the following disallowances:

- a) Addition on account of share capital Rs. 20 lakhs
- a) Addition on account of unsecured loss Rs. 29.50 lakhs
- a) Addition on account of expenses Rs. 30 lakhs

5. Assessment was challenged before the ld. CIT(A) and the ld. CIT(A), vide appellate order dated 18.04.2016 deleted the addition of Rs. 20 lakhs, reduced the addition of Rs. 29.50 lakhs to Rs. 12.35 lakhs and addition of Rs. 30 lakhs was reduced to Rs. 5 lakhs, which was upheld by the ITAT.

6. Thereafter, penalty proceedings u/s 271(1)(c) of the Act were initiated and the Assessing Officer completed the proceedings by levying penalty of Rs. 5,36,115/- u/s 271(1)(c) of the Act.

7. The assessee carried the matter before the Id. CIT(A) but without any success.

8. Before me, none appeared on behalf of the assessee. Notice issued by the Registry returned unserved. Therefore, I heard the Id. DR at length and having heard the Id. DR, I have carefully perused the orders of the authorities below and material available on record.

8. The notice u/s 274 of the Act which was issued and served upon the assessee is as under:

"To

M/s Vinayak Remedies Ltd.

1141/1,16 Behind Bagga Link service Station,

Rithala, New Delhi-110086

Whereas in the course of proceedings before me for the assessment year 2010-11 it appears to me that you:-

I have without reasonable cause failed to comply with a notice u/s 142(1)/143(2) of the Income tax Act, 1961.

I have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5.

You are hereby requested to appear before me at 02.00 AM/P.M. on 29-08-2017 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.

Penalty u/s 271(1)(c)

Assessing Officer
[Arindam Misra]
Asstt Commissioner of IT
New Delhi

9. A perusal of the aforementioned notice clearly shows that the Assessing Officer did not specify under which limb of the provision he has initiated the proceedings. Moreover, the penal proceedings are separate from assessment proceedings and while initiating penalty proceedings u/s 271(1)(c) of the Act, it is incumbent upon the Assessing Officer to demonstrate under which limb he is proposing levy of penalty.

10. On identical circumstances, the Hon'ble High Court of Delhi In the case of Sahara India Life Insurance Company Ltd ITA No. 475 of 2019 order dated 02.08.2019 has 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."

11. If the notice is read with the decision of the Hon'ble High Court of Delhi [supra], in our considered opinion, the penalty will not survive. It would not be out of place to refer to the decision of the Hon'ble High Court of Delhi in the case of Virgo Marketing Pvt Ltd [2008] 171 Taxmann 156 [Delhi] wherein the Hon'ble High Court held as under:

"We are unable to discern from a reading of the assessment order why the Assessing Officer chose to initiate penalty proceedings against the assessed and under which part of [Section 271\(1\)\(c\)](#) of the Act. In other words, we are unable to discern from the assessment order the reason for initiating penalty proceedings. Therefore, the concurrent view held by both the authorities below must be accepted."

12. Further, the Hon'ble Supreme Court in the case of SSA's Emerald Meadows Pvt Ltd [2016] 8 TMI 1145 - The Hon'ble Apex Court held that the High Court order confirmed in [2015] (11) TMI 1620 - Karnataka High Court. Notice issued by the Assessing Officer u/s 274 r.w.s 271(1)(c) of the Act to be bad in law as it did not specify which limb of

section 271(1)(c) 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 issue was decided in favour of the assessee.

13. Considering the facts of the case in totality, in the light of judicial decisions referred to hereinabove, I set aside the findings of the Id. CIT(A) and direct the Assessing Officer to delete the penalty of Rs. 5,36,115/-.

14. In the result, the appeal filed by the assessee in ITA No. 2886/DEL/2019 is allowed.

The order is pronounced in the open court on 12.03.2020.

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 12th March, 2020.

VL/

Copy forwarded to:

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

Asst. Registrar,

5. DR

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	