

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I(2) + SMC' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,
AND
SHRI B. R. R. KUMAR, ACCOUNTANT MEMBER**

ITA No. 6585/DEL/2018 (A.Y 2011-12)

Srikant Shah E-2/2, 2 nd Floor, Shastri Nagar, New Delhi APFPS7384M (APPELLANT)	Vs	ITO Ward-19(3) New Delhi (RESPONDENT)
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Appellant by	Sh. Manpreet Singh Kapoor, CA
Respondent by	Sh. Pradeep Singh Gautam, Sr. DR

Date of Hearing	27.02.2020
Date of Pronouncement	08 .05.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 21/3/2016 passed by CIT(A)-34 for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

“1. (a) That the order for imposing penalty u/s 271(1)(c) is bad in law and as well on merits.

(b) That the A.O has not provided adequate opportunity to assessee to explain the facts on the case all notices except last one were served at wrong address.

(c) That the Order of CIT(A) is bad in law and on facts and circumstances of the case among other defends the show cause notice it does not specified

charge for which penalty is being levy.

2. That the imposing penalty on addition of Rs. 14,54,230/ is bad in law as the assessee has not concealed/.filed inaccurate particulars of income.

3. That the imposing penalty on addition of Rs. 16,847/- is bad in law as the assessee has not concealed/.filed inaccurate particulars of income.”

3. In this case, return of income was filed on 18.08.2011 disclosing an income of Rs. 3,34,010/- for the year under consideration. An information was received by the Assessing Officer that the assessee has maintained four bank accounts wherein he has made cash deposits aggregating to Rs. 2,06,07,157/-. During the assessment proceedings, the assessee submitted that he was engaged in the business of trading in fabric and mobile accessories, but was not maintaining books of account. It was further submitted that most of the transactions of bank account are sales and purchases but in absence of books of account, it is difficult to establish the exact sales amount. In view of this, to avoid litigation, assessee computed profit at Rs. 17,88,240/- @ 8% on entire amount of Rs. 2,23,53,003/- deposited in bank accounts and filed revised computation of income. In view of this revised computation, the Assessing Officer made an addition of Rs. 14,54,230/-(Rs. 17,88,240 - Rs. 3,34,010 already declared in the return) and completed the assessment. Similarly, one more addition of Rs. 16,847/- on account of bank interest not disclosed by assessee on the deposits in the bank, was also made by the Assessing Officer. The penalty proceedings u/s 271(1)(C) of the Act were initiated by him on the ground that the surrender of income was not made by assessee on his own volition but only after the same has been detected by the Assessing Officer. After the initiation of penalty proceedings, in due course, the Assessing Officer issued penalty notices u/s. 271(l)(c) of the Act giving assessee opportunities to explain his case along with necessary submissions or explanations. However, no reply was received by the Assessing Officer from assessee till the date of passing the penalty order as on 22.08.2014. Consequently penalty proceedings were completed by the

Assessing Officer on the basis of material available on record. It has been discussed by the Assessing Officer in the penalty order that assessee could not explain the source of deposits in the bank accounts. Thus, as per the Assessing Officer, assessee failed to explain the source of credits in the aforesaid bank accounts maintained or operated by him and he surrendered the income only after detection by the Assessing Officer. Consequently, relying on the provisions of Explanation-1 of Section 271(l)(c) of the Act, the Assessing Officer levied the penalty of Rs. 3,88,549/-, 100% of the tax sought to be evaded on the income of Rs. 14,71,077/-, and passed the order of 22.08.2014.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the show cause notice dt. 10-02-2014 u/s 271(l)(c) does not specify the charge for levy of penalty, i.e. whether for concealment of income or for furnishing of inaccurate particulars of income. The notice is not valid in law. The notice does not state whether the Assessee is liable for concealment of income or for furnishing inaccurate particulars. Though the notice shows these options, neither of the options has been crossed out or so ticked as to make it clear which option the Assessing Officer is charging against the assessee. The Ld. AR relied upon the decision of the Hon'ble Karnataka High Court in case of CIT(A) Vs. M/s Manjunathan and Ginni Factory and ors 359 ITR 565. The above principal was further affirmed by the Apex Court in case of CIT(A) Vs. M/s SSA' Emerald Meadows. The Ld. AR also relied upon the decision of the Hon'ble Delhi High Court in case of Pr. CIT vs. Sahara India Life Insurance Co. Ltd. 2019 (8) TMI 409.

6. The Ld. DR relied upon the decision of the Hon'ble High Court in the case of New Holland Tractors India Pvt. Ltd. Vs. CIT 49 Taxman.com 573. The Ld.

DR relied upon the penalty order, assessment order and order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that there is no concealment in the present case. The Assessee has also filed all the details during the regular assessment proceedings. From the notice dated 10.02.2014 produced by the Ld. AR during the hearing, it can be seen that the Assessing Officer was not sure under which provisions of Section 271 of the Income Tax Act, 1961, the assessee is liable for penalty. The issue is squarely covered by the decision of the Hon'ble Supreme Court in case of M/s SSA' Emerald Meadows. The extract of the Hon'ble Karnataka High Court in M/s. SSA' Emerald Meadows are as under which was confirmed by the Hon'ble Apex Court:

“3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short ‘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 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) 359 ITR 565.

4. In our view, 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 in this appeal for determination by this Court. The appeal is accordingly dismissed.”

Since in the instant case also the inappropriate words in the penalty notice has not been struck off and the notice does not specify as to under which limb of the provisions, the penalty u/s 271(1)(c) has been initiated, therefore, we are of

the considered opinion that the penalty levied u/s 271(1)(c) is not sustainable and has to be deleted. Although the Ld. DR submitted that mere non-striking off of the inappropriate words will not invalidate the penalty proceedings, however, the decision of the Hon'ble Karnataka High Court in the case of SSA'S Emerald Meadows (supra) where the SLP filed by the Revenue has been dismissed is directly on the issue contested herein by the Assessee. Further, when the notice is not mentioning the concealment or the furnishing of inaccurate particulars, the ratio laid down by the Hon'ble High Court in case of M/s. Sahara India Life Insurance Company Ltd. (supra) will be applicable in the present case. The Hon'ble Delhi 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.”

Further, the case law referred by the Ld. DR that of New Holland Tractor India (supra) will not be applicable in the present case as in that case the particular charge of Section 271 (1)(c) that of concealment of income was mentioned, but in present case that is not the case. Thus, notice under Section

271(1)(c) r.w.s. 274 of the Act itself is bad in law. We, therefore, set-aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied.

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

Order pronounced on this 08th Day of May, 2020.

**Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 08/05/2020
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	27.02.2020
Date on which the typed draft is placed before the dictating Member	02.02.2020
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	13.05.2020
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	