

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Ms. Sushma Chowla, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2554/Del/2017 : Asstt. Year : 2010-11

DCIT Circle -4 (1) Gurgaon	Vs	M/s Telesonic Network Ltd. (known as M/s Alcatel Lucent Network Management Services India), C-Wing, Airtel Centre, Plot No. 16, Udyog Vihar , Phase - IV, Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. AAHCA8010G		

Assessee by : None

Revenue by : Sh. H. K. Choudhary, CIT DR

Date of Hearing: 27.01.20

Date of Pronouncement: 14.05.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the orders of the Id. CIT(A)-2, Gurgaon dated 17.02.2017.

2. Following grounds have been raised by the revenue:

"1. The Ld. CIT(A) has erred in granting the relief to the assessee and deleted the penalty u/s 271 (1)(c) of the Income Tax Act, 1961 of Rs. 1,10,09,192/- in spite of the fact that the assessee has furnished inaccurate particulars by claiming 'Provisions of Fines & Penalties' in its ITR and concealed the income to that extent.

2. The Ld. CIT(A) has erred in granting the relief to the assessee and deleted the penalty u/s 271(1)(c) of the Income Tax Act, 1961 of Rs. 1,10,09,192/- in spite of the fact that the assessee has gone against

the settled law as laid down in the case of 'Sree Sajjan Mills Ltd. Vs. CIT [1985/56I TR 585(SC)] and Indian Molasses Co. Ltd. Vs CIT 37 ITR 66 (SC), and has treated a contingent liability as deductible, which clearly amounts to furnishing of inaccurate particulars of income, as this led to suppression of returned income."

3. The assessment in this case has been completed by making the following:

- Disallowance of the provision for fine and penalty debited by the assessee to P&L A/c and treating the same as contingent liability.
- Reimbursement of mobile sets given to employees was considered as capital expenditure which was treated as revenue expenditure by the assessee.
- One time transaction charge paid to IBM on signing of agreement treated as revenue expenditure by the assessee has been treated as capital expenditure.

4. The Assessing Officer made similar observation while initiating penalty on conclusion of the discussion under each item. The relevant portion of the observation of the Assessing Officer while initiating the penalty on all the three items is as under:

*"I am satisfied that the assessee has **concealed/furnished inaccurate particulars of his income** and furnished inaccurate particular of his income for the AY 2010-11. Accordingly, penalty proceedings u/s 271(1)(c) of the Act are being initiated separately."*

5. We have gone through the record before us. We have gone through the facts of the case and find that the Assessing Officer has not made it clear under which limb of the provisions of Section 271(1)(c) of the Act,

the penalty is being levied. There is glaring discrepancy between initiation of the penalty and levy of penalty. This is a jurisdictional issue arising out of the penalty order before us.

6. The Ld. Departmental Representative heavily relied on the judgment of Sundaram Finance Ltd. Vs CIT (2018) 403 ITR 407 (Madras) and argued that the Hon'ble High Court held that where notice did not show the nature of default, it was a question of fact. The assessee has understood purport and import of the notice, hence, no prejudice was caused to the assessee.

7. The judgment of the Hon'ble Jurisdictional High Court in the case of Sahara India Life Insurance Company Ltd. in ITA No. 426/2019 dated 02.08.2019 wherein the Hon'ble 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."

8. Similar view has been taken by the Hon'ble Supreme Court in the case of SSA's Emerald Meadows (CC No.11485/2016).

9. Hence, respectfully following the judgment of the Hon'ble Jurisdictional High Court, we hereby hold that the penalty levied by the Assessing Officer cannot be held to be legally valid in the eyes of law.

10. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 14/05/2020.

Sd/-

(Sushma Chowla)
Vice President

Dated: 14/05/2020

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR