

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

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

ITA No. 2874/DEL/2016 (A.Y 2009-10)

DCIT Central Circle-5, Room No. 361, 3 rd Floor, ARA Centre, Jhandewalan Extn, New Delhi (APPELLANT)	Vs	Metro Tyres Pvt. Ltd. 101, Jyoti Bhawan, Dr. Kumharji Nagar, Commercial Complex Delhi AAACM3394A (RESPONDENT)
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Appellant by	Sh. Salil Kapoor, Adv
Respondent by	Sh. Jagdish Singh, Sr. DR

Date of Hearing	15.06.2020
Date of Pronouncement	24.06.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 28/03/2016 passed by CIT(A)-24, New Delhi for Assessment Year 2009-10.

2. The grounds of appeal are as under:-

“1. *The order of Ld.CIT(A) is not correct in law and on facts.*

2. *That the Ld.CIT(A) has cancelled the penalty u/s 271(1)(c) without properly appreciating the fact that the quantum of additions were confirmed which tantamount to furnishing of inaccurate particulars of income by the assessee.”*

3. The return of income in this case was filed on 29/09/2009 declaring total income of Rs. 4,41,22,817/-. The return was processed u/s 143(1) of the Act. The case was selected for scrutiny and statutory notice u/s 143(2) dated

20/08/2010 was issued and duly served upon the assessee. The assessment was completed u/s 143(3) of the Income Tax Act, 1961 on 08/03/2011 at an income of Rs. 6,11,12,196/- and additions were made as under:-

- (i) disallowance u/s 14A Rs. 76,54,478/-
- (ii) disallowance on depreciation on non compete fees of Rs. 92,28,515/-
- (iii) disallowance on depreciation on computer accessories of Rs. 64,476/-
- (iv) disallowance of rental income treating as business income of Rs. 41,910/-

The assessee preferred appeal before the CIT(A) and the CIT(A) vide order dated 30/1/2013 dismissed the appeal of the assessee. In the meanwhile, the Assessing Officer initiated penalty proceedings u/s 271(1)(c) by issuing notice dated 08/03/2011 for hearing on 08/04/2011. Further, notice dated 11/02/2014 was also issued. The assessee did not file reply and therefore, the Assessing Officer imposed penalty of Rs.57,52,775/- thereby holding that the assessee evaded tax on income of Rs. 1,69,24,903/-.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) was not correct in cancelling the penalty u/s 271(1)(c) as the quantum of additions were confirmed which tantamount to furnishing of inaccurate particulars of income by the assessee. Therefore, the order of the CIT(A) be set aside and the penalty order be sustained. The Ld. DR relied upon the decision of the Hon'ble Delhi High Court in case of New Holland Tractors India Pvt. Ltd. vs. CIT 49 Taxman.com 573.

6. The Ld. AR submitted that the assessee has filed application under Rule 27 of the Income Tax Rules, 1962, thereby stating that the notice issued to the assessee u/s 274 is bad in law as the authorities has not given the specific charges either in the notice dated 08/03/2011 as well as in the assessment

order. Therefore, the appeal of the Revenue be dismissed and the order of the CIT(A) be sustained. The Ld. AR relied upon the decision of the Hon'ble Karnataka High Court in case of CIT(A) Vs. M/s Manjunatha 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 Pri. CIT Vs. Sahara India Life Insurance Companies Limited 2019 (8) EMI 409.

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 filed all the details during the regular assessment proceedings. From the notice dated 08/03/2011 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. The CIT(A) relying upon the decision of the Hon'ble Apex Court in case of CIT vs. Reliance Petro Products Pvt. Ltd. 322 ITR 328 (SC) held that it is not the Assessing Officer's case that the details supplied in the return are inaccurate. Merely because the assessee claimed the expenditure by virtue of a change of head of income and the claim was not acceptable to the Assessing Officer cannot per se attract penalty u/s 271(1)(c) of the Act. Thus, the CIT(A) has rightly deleted the penalty. The appeal of the Revenue is dismissed.

8. In result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 24th JUNE, 2020

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

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

Dated: 24/06/2020
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	22.06.2020
Date on which the typed draft is placed before the dictating Member	22.06.2020
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	24.06.2020
Date on which the final order is uploaded on the website of ITAT	24 .06.2020
Date on which the file goes to the Bench Clerk	24 .06.2020
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	