

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

**BEFORE
SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.5729/Del/2014
(ASSESSMENT YEAR-2007-08)**

Sh. Surinder Madan 978/9, Govind Puri, Kalkaji, New Delhi-110019 PAN -AAGPM 2931G (Appellant)	Vs.	Asst. CIT, Circle-22(1) New Delhi. (Respondent)
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Appellant By	Sh. Dinesh Gupta, CA
Respondent by	Sh. N.K. Bansal, Sr. DR/ Sh.S.S.Rana, CIT-DR
Date of Hearing	17.03.2020
Date of Pronouncement	12.06.2020

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:

This appeal is preferred by the Assessee against order dated 20.08.2014 passed by the Ld. Commissioner of Income Tax (Appeals)-XXIII, New Delhi {CIT(A)} for Assessment Year 2007-08, wherein the Ld. First Appellate Authority has upheld the imposition of penalty of Rs.4,28,345/- u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter called as 'the Act').

2.0 Brief facts of the case are that the assessment in this case was completed at an income of Rs.71,99,170/- u/s 143(3) of the Act on

18.12.2009 as against the returned income of Rs.39,46,315/-. The additions made by the assessee included addition of Rs.12,72,564/- on account of office maintenance expenses which was treated as capital expenditure by the Assessing Officer and was so confirmed by the Ld. First Appellate Authority. Subsequently, the impugned penalty was imposed on this addition because the Assessing Officer (AO) was of the view that the expenditure has resulted in betterment of old assets and subsequent increase in their efficiency and durability.

2.1 On appeal, the Ld. First Appellate Authority upheld the imposition of penalty and now the assessee is before the Tribunal challenging the confirmation of penalty and has raised the following grounds of appeal:

“1) That the Learned Commissioner Of Income Tax Appeals(xxiii) New Delhi has erred in law on the facts and circumstances of the appellant's case in confirming the penalty of Rs 4,28,345 under section 271(l)(c) of Income Tax Act 1961 levied by the Learned Assessing Officer.

2. That the Learned Commissioner Of Income Tax (Appeals) also grossly erred in holding that the appellant furnished inaccurate particulars of his income just because he claimed expenditure of Rs 1272564/- on repairs to building as revenue expenditure instead of treating the same as capital in nature. He was also wrong in holding

that the intention of the appellant was to mislead the Revenue.

3. That the Learned Commissioner of Income Tax (Appeals) failed to appreciate that the issue as to whether expenditure on repairs to factory building was of revenue or of capital nature was a highly debatable one and penalty u/s 271(l)(c) could not be levied on such debatable issue.

4. That the Assessing officer having treated the expenditure on repairs as capital in nature and having allowed depreciation on the same @10%, calculation of penalty, should have been on Rs 11,45,308 only (1272564-127256) instead of on Rs 1272564/-.

5. Penalty imposed was totally unwarranted, unjustified, illegal and was at any rate excessive.

6. That the order of the learned CIT (Appeals) was wrong both in facts and law to the extent indicated above.”

3.0 The Ld. Authorized Representative drew our attention to the notice dated 18.12.2019 issued u/s 274 of the Act and it was submitted that in this notice, penalty has been proposed to be imposed for having concealed the particulars of income or for furnishing inaccurate particulars of income. It was submitted that, thus, the assessee was not made aware of the charge for which the penalty was being proposed to be imposed. It was submitted that it was settled law that the assessee should

be made aware of the charge for which the penalty is being proposed to be imposed and a defect in the notice in the nature of the specific limb not being satisfied would vitiate the entire penalty proceedings. It was submitted that such a view has also now been upheld by the Hon'ble High Court of Delhi in the case of Sahara India Insurance Company Ltd. The Ld. AR also drew our attention to Para 3 of the penalty order wherein the Assessing Officer has held that the assessee had furnished inaccurate particulars of income and thereby concealed his income. It was submitted that the penalty ought to be deleted in view of the defect in the notice as aforesaid. The Ld. Authorized Representative placed his reliance on numerous judicial precedents in support of his contention that the defect in notice would make the imposition of penalty unsustainable in law.

4.0 Per contra, the Ld. Sr. Departmental Representative placed extensive reliance on the observations and findings of both the Lower Authorities. It was also pointed out that the ground relating to the defect in notice was not raised before the Ld. First Appellate Authority and, therefore, the assessee should not be permitted to raise this ground at this

junction. It was argued by the Ld. Sr. DR that the penalty should not be deleted on mere technicality.

5.0 We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. The Ld. AR for the assessee has challenged the impugned order contending that show-cause notice issued by the AO is not a valid notice to initiate the penalty proceedings as the assessee has not been made aware if he has concealed the particulars of income or has furnished inaccurate particulars of such income. It is settled principle of law that penalty cannot be imposed merely on the ground that additions made in the income of the assessee have been confirmed. Rather to proceed with the imposition of penalty u/s 271(1)(c), the AO has to prove that there was concealment of particulars of income or that the assessee has furnished inaccurate particulars of such income.

5.1 A bare perusal of the notice issued to the assessee u/s 274 read with section 271(1)(c) of the Act goes to prove that assessee has not been called upon to explain if he has concealed the particulars of

income or furnished inaccurate particulars of such income. The Hon'ble Karnataka High Court in case of CIT vs. Manjunatha Cotton and Ginning Factory & Ors dealt with the identical issue threadbare and came to the following conclusion :-

“63. In the light of what is stated above, what emerges is as under:

- a) Penalty under Section 271(1)(c) is a civil liability.*
- b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.*
- c) Willful concealment is not an essential ingredient for attracting civil liability.*
- d) Existence of conditions stipulated in Section 271(1)(c) is a sine qua non for initiation of penalty proceedings under Section 271.*
- e) The existence of such conditions should be discernible from the Assessment Order or order of the Appellate Authority or Revisional Authority.*
- f) Ever if there is no specific finding regarding the existence of the conditions mentioned in Section 271(1)(c), at least the facts set out in Explanation 1(A) & (B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.*
- g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(l)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1(B).*

- h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Appeals and the Commissioner.*
- i) The imposition of penalty is not automatic.*
- j) Imposition of penalty even if the tax liability is admitted is not automatic.*
- k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the assessing officer in the assessment order.*
- l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bonafide, an order imposing penalty could be passed.*
- m) If the explanation offered, even though not substantiated by the assessee, but is found to be bonafide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.*
- n) The direction referred to in Explanation IB to Section 271 of the Act should be clear and without any ambiguity.*
- o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the*

penalty proceedings have to be initiated by the appellate authority and not the Assessing Authority.

p) Notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income

q) Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law.

r) The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.

s) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.

t) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.

u) The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared as invalid in the penalty proceedings."

5.2 Therefore, following the law laid down by the Hon'ble High Court of Karnataka, as stated above, we are of the considered view that

when the assessee has not been specifically made aware of the charges leveled against him as to whether there is a concealment of income or furnishing of inaccurate particulars of income on his part, the penalty u/s 271(1)(c) of the Act is not sustainable. We also note that recently, the Hon'ble Delhi High Court has approved the order of the Hon'ble Karnataka High Court in the case of Sahara India Life Insurance. Accordingly, respectfully following the judicial precedents as aforementioned, we set aside the order of the Ld. First Appellate Authority and direct the AO to delete the penalty.

6.0 In the final result, the appeal of the assessee stands allowed.

Order pronounced on 12/06/2020.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated:12/06/2020

PK/Ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI