

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'E', NEW DELHI  
(Through Video Conferencing)**

**BEFORE, SHRI G.S. PANNU, VICE PRESIDENT  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.583/Del/2018  
(ASSESSMENT YEAR-2011-12)**

M/S M.A. Projects Pvt. Ltd., BA-17A, DDA Flats, Ashok Vihar, Phase-1, New Delhi. PAN:AAECM 2372E	Vs.	Asst. CIT, Central Circle-13, New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant By	<b>Sh. Suresh K. Gupta. CA</b>
Respondent by	<b>Ms. Rakhi Vimal, Sr. DR</b>
Date of Hearing	<b>18.08.2020</b>
Date of Pronouncement	<b>30.09.2020</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal has been preferred by the assessee against order dated 30<sup>th</sup> November, 2017 passed by the Learned Commissioner of Income Tax (Appeals)-XVI, New Delhi {CIT (A)} for Assessment Year 2011-12 wherein the Ld.CIT (A) has upheld the imposition of

penalty of Rs.15,45,000/- u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter called 'the Act,).

2.0 The brief facts of the case are that the assessee company is engaged in the business of Real Estate. The return of income was filed declaring an income at Rs. Nil and the assessment was completed at an income of Rs.50,19,200/- after making an addition of Rs.50 lacs u/s 68 of the Act and Rs.19,200/- u/s 14A of the Act. The addition of Rs.50 lacs was on account of receipt on share application money which, as per the Assessing Officer, could not be substantiated. The assessee's appeal against the quantum addition was upheld both by the Ld. CIT (A) as well as this Tribunal. The impugned penalty of Rs.15,45,000/- was imposed by the Assessing Officer vide order dated 28.03.2016 for the concealing/furnishing inaccurate particulars of income. Now the assessee has approached this Tribunal challenging the confirmation of penalty by raising the following grounds of appeal:

*"1. The Ld. CIT(A) has erred both in law and in facts in upholding the impugned penalty order passed by Ld. AO is arbitrarily, unjustly and without basis in levying penalty of Rs. 15,45,000/- u/s 271(1)(c) of the IT Act.*

2. The Ld. CIT(A) is, neither on facts or in law, justified in upholding the levy of penalty of Rs.15,45,500- u/s 271(1 )(c) for concealing/furnishing inaccurate particulars of income whereas the penalty proceedings had been initiated as per the order of assessment for one default which is furnishing inaccurate particulars of income. The AO was not justified changing over the default while levying the penalty in consequent of such initiation for the default for which penalty proceedings were initiated.

3. The Ld. CIT(A) has erred both on facts and in circumstances of the case in confirming imposition of penalty of Rs. 15,45,500/- u/s 271(1)(c) for concealing/furnishing inaccurate particulars of income without specifying the precise default in the notice and therefore the printed notice without striking off the inapplicable issued for levy of penalty was vague, non- communicative and thus non speaking defeating the purpose of notice.

4. The impugned order of penalty passed by Ld. AO need be quashed on the ground that the AO has relied on authorities justifying deemed concealment whereas the penalty proceedings were initiated not for concealment but for a different default of furnishing of inaccurate particulars of income.

5. The impugned order of penalty is not sustainable as the addition u/s68 does not offer ground to the AO to consider the additional income as concealed income.

6. The appellant craves leave to add, delete, modify / amend the above grounds of appeal with the permission of the Hon'ble appellate authority.”

3.0 The Ld. Authorised Representative submitted that there has been inconsistency in the approach of the Assessing

Officer (AO) while imposing the penalty. It was submitted that in page-4 of the assessment order, the penalty was initiated for furnishing inaccurate particulars of income whereas in the notice u/s 274 dated 03.03.2014, the penalty was proposed for concealing particulars of income or furnishing inaccurate particulars of income. It was further submitted that in the penalty order, the penalty was imposed for furnishing inaccurate particulars of income and the Assessing Officer also stated that the assessee could not prove that there was no concealment. It was submitted that, thus, there has been total non application of mind by the Assessing Officer and that the Assessing Officer kept of switching between the two limbs of default. It was also submitted that the Assessing Officer also invoked Explanation-1 to Sec.271(1)(c) which applies to concealment of particulars of income, for which the penalty proceedings had not been initiated. It was submitted that there was a complete failure on the part of the Assessing Officer to specify the charge for which the penalty was being initiated and also for which it was imposed. The Ld. Authorized Representative placed reliance on numerous judicial precedents wherein it has

been held that failure to specify the charge for which the penalty has been initiated and imposed would make the imposition of penalty unsustainable.

4.0 In response, the Ld. Sr. Departmental Representative (DR) vehemently argued that non-striking of the limb did not cause any prejudice to the assessee in as much as the assessee had been given proper opportunity to defend its case prior to the imposition of penalty. It was further submitted by the Ld. DR that the Tribunal has upheld the quantum addition and, therefore, it was a fit case for imposition of penalty. It was also argued that furnishing of inaccurate particulars leads to concealment of income. The Ld. Sr. DR relied on numerous case laws to buttress her argument that the penalty had been rightly imposed. The Ld. Sr. DR specifically relied on the judgment of Hon'ble Madras High Court in the case of Sundaram Finance Limited vs. ACIT reported in 403 ITR 407 (Madras) for the proposition that if the assessee has understood the purport and import of notice, no prejudice is caused by not striking off of the irrelevant limb in the penalty notice. The Ld. Sr. DR prayed for upholding of the penalty.

5.0 We have heard the rival submissions and have also perused the material on record. Although, it is undisputed that the quantum addition has been upheld by this Tribunal, all the same, it is trite that imposition of penalty does not automatically follow the confirmation of quantum addition. We have gone through the notice dated 03.03.2014 issued u/s 274 of the Act and we note in this notice, irrelevant words in the penalty notice have not been struck off and, thus, the notice does not specify as to under which the limb of section 271(1)(c) was the penalty being proposed to imposed. We also note that right from the assessment proceedings, the Assessing Officer has been inconsistent in his approach regarding the imposition of penalty. As has been rightly brought to our notice by the Ld. Authorized Representative, it is seen that in page -4 of the assessment order, the Assessing Officer has recorded satisfaction for imposition penalty for furnishing of inaccurate particulars of income whereas in the notice dated 03.03.2014 issued u/s 274 of the Act, penalty proceedings have been initiated for concealing particulars of income/furnishing inaccurate particulars. Further, in the penalty order, the penalty has been imposed for furnishing

inaccurate particulars of the income as the assessee could not prove that there was no concealment. Further in para-6 of the penalty order, the penalty is ultimately imposed for concealing/furnishing inaccurate particulars of income. Thus, apparently the assessee was not made aware of the charge for which the penalty was being proposed to be imposed and was finally imposed. This issue is no longer *res-integra* and the issue has to be decided in favour of the assessee in light of the judgment of the Hon'ble Karnataka High Court in the case of *CIT vs. Manjunatha Cotton & Ginning Factory* reported in 359 ITR 565 (Karn-HC) wherein it has been held that the notice issued by the Assessing Officer would be bad in law, if it did not specify under which limb of Sec. 271(1) (c) the penalty proceedings had been initiated i.e. whether for concealment of particulars of income or for furnishing inaccurate particulars of income. Further, the Hon'ble Delhi High Court, in the case of *Sahara India Life Insurance Company Ltd.*, has approved the action of this Tribunal in applying the law laid down by the Hon'ble Karnataka High Court in the case of *ACIT vs. Manjunatha Cotton & Ginning Factory (supra)* and has held that there was no error

committed by this Tribunal in deleting the penalty. Therefore, in view of the judgment of the Hon'ble Delhi High Court in the case of *Sahara India Life Insurance Company Ltd.*, being the jurisdictional High Court for the assessee and respectfully following the judgment of the Hon'ble Karnataka High Court in the case of *Manjunatha Cotton & Ginning Factory (supra)* we have no option but to set the order of the Ld. CIT (A) and direct the Assessing Officer to delete the penalty. It is so directed accordingly.

5.1 Before parting, we would also like to state that the Revenue's reliance on the judgment of the Hon'ble Madras High Court in the case of *Sundaram Finance Limited vs. CIT (supra)* cannot come to the rescue of the Department in the present case for the reason that being bound by the judicial discipline, we have to follow and apply the law as approved by the Jurisdictional High Court i.e., the Hon'ble Delhi High Court.

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

Order pronounced on 30/09/2020.

Sd/-

**(G.S.PANNU)**  
**VICE PRESIDENT**

Dated: 30/09/2020

PK/Ps

Copy forwarded to:

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

Sd/-

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI