

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-I": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 7584/Del/2018
(Assessment Year: 2014-15)

Monica Singh, CA MR Sahu, M Sahu & Associates, CAs, House No. 651, 1 st Floor, Sector- 10A, Meenakshi Public School, Gurgaon PAN: CAGPS9056L	Vs.	ITO, Ward-2(5), Gurgaon
(Appellant)		(Respondent)

Assessee by :	Shri M. R. Sahu, CA
Revenue by:	Shri R. K. Gupta, Sr. DR
Date of Hearing	27/10/2020
Date of pronouncement	28/10/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-1, Gurgaon dated 22.10.2018 for the Assessment Year 2014-15, wherein, penalty levied u/s 271(1)(c) of the Act of Rs. 11,11,653/- by the Id ITO, Ward-2(5), Gurgaon (Id AO) was confirmed.
2. The assessee has raised the following grounds of appeal:-
 - “1. That having regard to the facts and circumstances of the case and in law, the order passed by CIT(A) was passed without following principle of 'natural justice' as the order was passed without following any of the judicial precedent relied upon in written submissions placed before Ld.CIT(A), thus appeal order is not a 'reasoned order' deserves to be quashed.
 2. That having regard to the facts and circumstances of the case and in law, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld.AO in levying penalty under section 271(l)(c) of Rsl,11,653/- ignoring the fact that assessee has submitted a detailed explanation before the AO in the course of penalty proceedings which was not found as false and not bonafide and accordingly explanation offered by assessee shall be presumed to be genuine one , thus imposition of penalty is not sustainable in the eye's of law.
 3. Without prejudice the ground mentioned at ground no.1, it is submitted that initial onus placed upon the assessee appellant was duly discharged before the AO by offering proper explanation both during scrutiny and penalty proceedings which was simply rejected by holding that disclosure was made by the assessee in the scrutiny

assessment proceedings , thus onus shifts to the AO which was not discharged and accordingly levy of penalty is bad in law and not sustainable .

3. *That the Commissioner of Income Tax (Appeals) has erred in relying on the judgments totally incapable to the facts of the case of the assessee appellant and has further grossly erred in not considering any of the judicial precedents relied upon by the assessee appellant under the same facts of the case of the assessee –appellant.”*

3. The assessee has raised the following additional grounds of appeal:-

- “1. *That under the facts and circumstances of the case and in law, Appellant submits that satisfaction of the AO while initiating penalty proceedings under section 271(1)© in the assessment order dated 13.10.2016 was with regard to alleged 'concealed the particulars of her income' by the assessee/appellant, where was imposition of penalty under section 271(1)© was made by ticking the stereotyped format of notice dated 13.10.2016 issued under section 274 r.w.s 271" Have concealed the particulars of your income or furnished inaccurate particulars of such income " levy of penalty is bad in law and not sustainable.*

2. *Without prejudice the additional ground raised at point -1, it is submitted that, AO recorded his satisfaction in the assessment order dated 13.10.2016 for initiation of penalty proceedings and accordingly penalty under section 271(1)© in the penalty order dated 28.04.2017 was imposed under the limb "concealed the particulars of her income', where as notice under section 274 r.w.s 271 was issued by ticking " furnished inaccurate particulars of such income ", notice issued under section 274 r.w.s 271 was bad in law and as charge against the assessee was created under the both the limbs of section 271(1)© and thus levy of penalty is not sustainable.*

4. The assessee has raised several grounds on the merits of the levy of the penalty. During the course of hearing the assessee has raised additional grounds of appeal stating that the ld AO has not struck off any of the limbs of the levy of the penalty in the notice dated 13.10.2016 and therefore, in view of the decision of the Hon’ble Karnataka High Court in case of SSA’s Emerald Meadows (2016) 73 Taxmann.com 241 (Kar) the penalty levied deserves to be cancelled. The assessee submitted that the above ground goes to the root of the matter and he relied on the decision of the Hon’ble Supreme Court in case of NTPC Vs. CIT 229 ITR 383.
5. The ld DR vehemently opposed the above additional grounds as it was not raised before the lower authorities.
6. We have carefully considered the rival contentions and find that the additional ground raised by the assessee goes to the root of the matter, jurisdictional in nature, can be raised at anytime during pendency of appeal, hence, deserves to be admitted. Hence, we admit the same.
7. Before us advertent to the additional ground raised by the assessee , ld AR submitted copy of the notice u/s 274 rws 271 of the Act dated 13.10.2016 and stated that the ld AO has not struck off any of the twin limbs.
8. The ld DR vehemently submitted that the levy of penalty is discernable from the assessment order no weightage can be given to the notice.

9. We have considered the rival contentions and find that in the notice u/s 274 rws 271 of the act dated 13.10.2016 the ld AO did not struck off any of the limbs i.e. Concealment of income or for furnishing inaccurate particulars of income. Therefore, respectfully following the decision of the Hon'ble Karnataka High Court in case of CIT Vs. SSA Emerald Meadows (2016) 73 Taxmann.com 241 (Kar) and the decision of the Hon'ble jurisdictional High Court in case of PCIT Vs. SAHARA INDIA LIFE INSURANCE COMPANY Ltd ITA 475 of 2019 cannot be sustained. In this case it is clearly established that notice u/s 274 read with section 271 of the Act is defective and therefore we find it difficult to hold that the ld AO has rightly assumed the jurisdiction to pass the order levying the penalty. Therefore, as consequent, we direct the ld AO to delete the penalty in question. In view of this fact it is not necessary to go into the merits of the addition and merits of penalty levied. Therefore, assessee succeeds on the additional grounds and same is allowed.
10. In the result appeal of the assessee is allowed accordingly.
Order pronounced in the open court on 28/10/2020.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 28/10/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	27.10.2020
Date on which the typed draft is placed before the dictating member	28.10.2020
Date on which the typed draft is placed before the other member	28.10.2020
Date on which the approved draft comes to the Sr. PS/ PS	28.10.2020
Date on which the fair order is placed before the dictating member for pronouncement	28.10.2020
Date on which the fair order comes back to the Sr. PS/ PS	28.10.2020
Date on which the final order is uploaded on the website of ITAT	28.10.2020
date on which the file goes to the Bench Clerk	28.10.2020
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	