

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)

ITA No.2138 to 2140 /DEL/2014

[A.Y 2008-09 to 2010-11]

Sudhir Power Projects Ltd., 507, International Trade Tower, Nehru Place, New Delhi PAN No.AAKCS7074F	Vs.	ACIT Central Circle- 25 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.2141 to 2143 /DEL/2014

[A.Y 2004-05 to 2006-07]

Sudhir Engineering Co. 507-509, International Trade Tower, Nehru Place, New Delhi PAN No.AABFS6000P	Vs.	DCIT Central Circle- 25 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Karan Kamra, CA
Respondent by	Sh. H.K. Choudhary, CIT (DR)

Date of hearing:	07/12/2020
Date of Pronouncement:	09/12/2020

ORDER

PER N. K. BILLAIYA, AM:

1. ITA No.2141/Del/2014, 2142/Del/2014, 2143/Del/2014 are appeals by Sudhir Engineering Co., New Delhi for A.Y. 2004-05 to 2006-07 and ITA No.2138/Del/2014, 2139/Del/2014, 2140/Del/2014 are appeals by Sudhir Projects Ltd., New Delhi for A.Y. 2008-09 to 2010-11.
2. M/s. Sudhir Engineering Company was transferred to Sudhir Power Projects Ltd. vide slump sale agreement dated 20.08.2007. Pursuant to such transfer, all its assets and liabilities were taken over by M/s. Sudhir Power Projects Ltd. Thereafter, Sudhir Engineering Company stood dissolve vide dissolution deed dated 30.04.2007.
3. Therefore, there are two appellants. However, the underlying facts in the issues are identical in all the captioned appeals, therefore, all these appeals are disposed of by this common order for the sake of convenience and brevity.
4. **ITA No.2141/Del/2014 (A.Y. 2004-05)** - In this case assessment was framed u/s. 143 (3) r.w.s. 153 A vide order dated 22.12.2011. The assessment order travelled upto the Tribunal and the Tribunal quashed and declared the assessment order void ab initio vide order dated 27.04.2016.

5. Since the foundation has been removed the super structure (penalty u/s. 271 (1) (c) of the Act) must fall. The AO is directed to delete the penalty so levied.

6. ITA No.2142/Del/2014, 2143/Del/2014, 2138/Del/2014, 2139/Del/2014 and 2140/Del/2014 (A.Y. 2005-06, 2006-07, 2008-09, 2009-10 & 2010-11) -The quarrel is in respect of the penalty levied u/s 271(1)(c)of the Act on identical facts. The bone of contention is the disallowance of the claim of depreciation on flats. The assessee has claimed depreciation on flats which were part of the block of assets in the balance sheet. During the course of scrutiny assessment proceedings the AO pointed out to the assessee that such claim of depreciation is not allowable. The assessee contended that since the flats are part of the block of assets it has claimed the depreciation. However, when the depreciation was disallowed by the AO the assessee did not contended before the Appellate Authorities. The AO levied the penalty on such disallowance of the claim of depreciation.

7. The first proposition of the counsel is that the AO in the assessment order recorded satisfaction observing that the assessee has furnished in accurate particulars of income whereas while levying the penalty u/s. 271 (1) (c) of the Act. The AO has levied the penalty for concealment of income. The counsel heavily relied upon the notice issued u/s. 274 of the Act stating that in the notice the AO has not specified under which limb the penalty is leviable.

8. Per contra the DR vehemently stated that in the assessment order itself the AO has clearly mentioned that penalty is leviable for furnishing

inaccurate particulars and, therefore, non mentioning in the notice has caused no project to the assessee.

9. We have given a thoughtful consideration to the rival submissions. The notice u/s. 274 is as under :-

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT,1961

*Asstt, Commissioner of Income Tax
Central Circle-25, New Delhi
DATED:-28/12/2011*

“TO

*M/s Sudhir Power Projects Ltd
507-509 International trade
Tower Nehru Place New Delhi*

Whereas in the course of proceedings before me for the assessment year-2009-10. It appears to me that you:-

**have without reasonable cause failed to comply with a notice under section 143(1)/143(2) of the: income Tax Act, 1081 dated,...*

** have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4, and 5*

You are hereby requested to appear before me at 10.3GJMPPM on 20/01/2012 And snow cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act-1061 if you do not wish to avail yourself of this opportunity of being heard in person of through authorized representative you may show cause in writing on or before the said date which will be considers before any such order is made under section 271

*Asstt. Commissioner of Income
Central Circle-25, New Delhi”*

10. The undisputed fact is that in the assessment order the AO has recorded satisfaction for furnishing inaccurate particulars of income. It is also an undisputed fact that the penalty has been levied for concealment of income. Therefore, it cannot be said that the AO has made it clear to the assessee under which limb he is going to impose the penalty. On identical set of facts -:

“Hon’ble Apex Court in the case of CIT vs. SSA’s Emerald Meadows (2016) 73 taxmann.com 248 Special Leave to Appeal (C) No. 11485 of 2016 wherein the appeal filed by revenue against the decision of Hon’ble Karnataka High Court in the case of CIT vs. SSA’s Emerald Meadows [2016] 73 taxmann.com 241 (Karnataka) IT Appeal No 380 of 2015 was dismissed. It was held that a notice u/s 274 r.w.s. 271(1)(c) not specifying the limb on which penalty was initiated was invalid and illegal, and consequently penalty proceedings were null and void. The relevant extract of the decision of Hon’ble Karnataka High Court in the said case is reproduced below:

“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 CIT v. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565/218 Taxman 423/35 taxmann.com 250 (Kar.).

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."

2.17 A similar decision has recently been given by Hon'ble Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Company Ltd. (ITA No. 475/2019, 426/2019, 427/2019 and 429/2019), the relevant extract of which is reproduced below:

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.

23. The appeals are accordingly dismissed."

12. In the light of the above we are of the considered opinion that the penalty levied by the AO u/s. 271 (1) (c) of the Act is bad in law and deserves to be deleted. We order accordingly.

13. The second proposition made by the counsel is that the assessee claimed depreciation inadvertently as the flats were shown in the block of assets in the balance sheet. It is the say of the counsel that when it was brought to the notice of the assessee the disallowance was accepted and not appealed. The DR vehemently stated that the assessee has been claiming depreciation year after year and, therefore, the same cannot be considered as an inadvertent error.

14. We have carefully considered the rival submissions. It is true that the assessee has claimed depreciation on flats. It is equally true that when the returned income of the assessee is in crores a claim of paltry sum of few lacs would do no tax benefit to the assessee.

15. In our considered opinion the claim is definitely a human error and merely the claim was not allowable the same cannot lead to the levy of penalty u/s. 271 (1) (c) of the Act as held by the Hon'ble Supreme Court in the case of Reliance Petro Projects Pvt. Ltd. reported in 322 ITR 158.

16. Considering from this angle also we do not find impugned appeals fit for levy of penalty u/s. 271 (1) (c) of the Act. We accordingly direct the AO to delete the penalty. All appeals are accordingly allowed.

17. In the result, all the appeals filed by the assessee are allowed.

18. The order has been pronounced in the open court in the presence of the representative of both the sides on 09.12.2020.

Sd/-
[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Dated: 09.12.2020

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
[N. K. BILLAIYA]
ACCOUNTANT MEMBER

Asst. Registrar
ITAT, New Delhi

Date of dictation	08.12.2020
Date on which the typed draft is placed before the dictating Member	09.12.2020
Date on which the typed draft is placed before the Other member	09.12.2020
Date on which the approved draft comes to the Sr.PS/PS	09.12.2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	09.12.2020
Date on which the fair order comes back to the Sr. PS/ PS	09.12.2020
Date on which the final order is uploaded on the website of ITAT	09.12.2020
Date on which the file goes to the Bench Clerk	09.12.2020
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	