

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

**Before Sh. Amit Shukla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 5060/Del/2013 : Asstt. Year : 2004-05**

M/s Havells India Ltd. 1, Raj Narain Marg, Civil Lines, Delhi-110054	Vs	ACIT-LTU, NBCC Plaza, Sector-4, Pushp Vihar, Saket, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAAC0351E</b>		

**Assessee by : Sh. Rohit Jain, CA**

**Revenue by : Sh. Gaurav Dudeja, Sr. DR**

**Date of Hearing: 11.11.2020**

**Date of Pronouncement: 19.11.2020**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-LTU, New Delhi dated 17.07.2013.

2. Following grounds have been raised by the assessee:

1. *"That the impugned order of CIT (Appeals), LTU, New Delhi is bad in law and wrong on the facts and in the circumstances of the case and legal position.*

2. *That on the facts and in the circumstances of the case and the legal position, the learned CIT (Appeals) has erred in confirming the penalty levied u/s 271(l)(c) in respect of addition on account of interest paid to Syndicate Bank amounting to Rs.2,80,276/-.*

3. *That on the facts and in the circumstances of the case and the legal position, the learned CIT (Appeals) has erred*

*in confirming the penalty levied u/s 271 (1)(' c) in respect addition on account of non compete fee paid amounting to Rs. 5,00,000/-.*

*4. That on the facts and in the circumstances of the case and the legal position, the learned CIT (Appeals) has erred in confirming the penalty levied u/s 271(l)('c) in respect of less deduction u/s 80HHC allowed amounting toRs.64,007/-.*

*5. That on the facts and in the circumstances of the case and the legal position, the learned CIT (Appeals) has erred in confirming the penalty levied u/s 271(1)(c) in respect of addition on account of miscellaneous expenditure incurred for increase in authorized capital amounting to Rs.41,012/-.*

*6. That the appellant, craves, leave to add/alter/delete/amend any ground(s) of appeal before or at the time of hearing."*

3. On going through the record, we find that the penalty has been levied u/s 271(1)(c) in respect of disallowance on account of non compete fee, expenditure incurred for increase in authorized capital and wrong deduction claimed u/s 80HHC on account of interest earned.

4. At the outset, the Ld. AR argued that the notice issued was bad in law and *void ab initio* as the notice *prima facie* did not satisfy the condition as to which limb of section 271(1)(c) the penalty has been levied either concealed income or furnished inaccurate particulars of income. It was argued that that it is elementary that for assuming valid jurisdiction to impose penalty, the assessing officer must, first be satisfied, though *prima facie*, that the

assessee has either "concealed income" or furnished "inaccurate particulars of income" and on the basis of such satisfaction a show cause notice has to be issued under section 274 of the Act to the assessee specifying the addition/ disallowance in respect of which penalty is sought to be imposed and also the precise charge/ ground on which penalty is proposed to be imposed thereon. It was argued that notice issued under section 274 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'. Sending printed form, where both the grounds mentioned in section 271 of the Act are mentioned, does not satisfy requirement of law.

5. Ld. DR argued that the assessed was well aware of the reason of levy of penalty and has indeed replied to the show cause notice.

6. We have gone through the penalty notice issued by the Assessing Officer and find that the penalty notice does not specify whether the penalty was proposed for concealment of particulars of income or for furnishing inaccurate particulars of such income in terms of provisions of Section 271(1)(c).

7. The Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory: 359 ITR 565 held that notice under section 274

should specifically state the grounds mentioned in section 271(1)(c) of the Act, i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy requirement of law.

8. The jurisdictional Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd. in ITA No. 475 of 2019, reiterated that notice under section 274 should specifically state the grounds on which penalty was sought to be imposed as the assessee should know the grounds which he has to meet specifically.

9. The aforesaid principle has been reiterated in the in the case of CIT vs. SSA'S Emerald Meadows: 73 taxmann.com 241 (Kar) [Revenue's SLP dismissed in 242 Taxman 180]

10. In the present case, too, in notice dated 29.12.2006 and on 23.12.2011 issued under section 274 read with section 271 of the Act, initiated penalty against the appellant for alleged 'concealment of income or furnishing of inaccurate particulars of such income', that is to say, the specific default was not specified by the assessing officer in the notice issued.

11. Hence, respectfully following the order of the Jurisdictional High Court, since the notice u/s 274 has not been specified as

to whether penalty is proposed for alleged 'concealment of income' OR 'furnishing of inaccurate particulars of such income', the penalty levied is hereby obliterated.

12. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 19/11/2020.

Sd/-

**(Amit Shukla)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 19/11/2020**

\*Binita\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**

		Date	Initial	
1.	Dictated by Member	18.11.2020		PS
2.	Draft placed before author	18.11.2020		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Date of uploading			