

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 5088/DEL/2017 (A.Y 2008-09)**

**(THROUGH VIDEO CONFERENCING)**

Radhika Surgical Pvt. Ltd. C-30, Panchsheel Enclave, New Delhi AADCR5053L <b>(APPELLANT)</b>	Vs	ACIT Central Circle-6 New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. P. C. Yadav, Adv</b>
<b>Respondent by</b>	<b>Sh. Atique Ahmed, Sr. DR</b>

<b>Date of Hearing</b>	<b>19.01.2021</b>
<b>Date of Pronouncement</b>	<b>21.01.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against order dated 29/06/2017 passed by CIT(A)-24 Delhi for assessment year 2008-09.

2. The grounds of appeal are as under:-

“1. *That the Ld. CIT (Appeal) has erred in upholding the penalty of Rs. 10,52,593/- imposed by the AO., invoking the provisions of sec 271(1)(c) of IT Act 1961.*

*2. That the Ld. CIT (Appeal) has erred in upholding the penalty of Rs. 10,52,593/-, without considering the facts and circumstances of the case and relying on irrelevant judicial pronouncements.*

*3. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence”*

**Additional Ground:**

*a) On the facts and under the circumstances of the case the penalty levied under section 271(1)(c) of the Act is void as the notice u/s 274 Read with Sec. 271 is bad and defective as it is issued without deleting the appropriate clause under which the penalty is proposed to be imposed is either for filing of inaccurate particular of income or concealment of particular of income and as such the notice is not sustainable and not curable.”*

3. Search and seizure action u/s 132(4) of the Income Tax Act, 1961 (hereafter referred to as the “the Act”) was carried out in the Rockland group of cases on 06.09.2011. Subsequent to the search and seizure action, assessment proceedings were carried out u/s 153C r.w.s. 143(3), by issue of notice dated 05.08.2013 to the appellant to file the return of income. In response, the assessee filed return of income on 10.09.2013, disclosing the total income as NIL. Subsequently, the assessee filed an application for settlement u/s 245C of the Act before the Income Tax Settlement Commission in

the capacity of a “related” person, related to the other assessee’s of the Rockland group who had also filed settlement applications as “specified person” u/s 245C(i) proviso (i). However, the assessee's application was rejected by the Income Tax Settlement Commission vide their order dated 23.04.2013, wherein the Commission held that the assessee does not qualify for admission as a person “related to” to the “specified person”. The assessee filed a writ petition before the Hon’ble Delhi High Court, challenging the rejection order of the Settlement Commission, but the petition was dismissed by the Hon’ble Delhi High Court on 20.10.2015. Meanwhile, the Assessing Officer passed the assessment order making the following additions over and above the income returned by the assessee:

A.Y	Head of addition	Amount (IN Rs.)
2008-09	(i) Disclosure in settlement application	30,00,000
	(ii) Unexplained cash credits	1,79,56,880/-
	(iii) Commission paid to secure unexplained cash credits	5,38,706/-

The assessee filed appeal against all the above heads of additions. In the appeal against the quantum additions, the following amounts were confirmed in first appeal.

A.Y	Head of addition	Amount (IN Rs.)
2008-09	(i) Disclosure in settlement application	30,00,000
	(ii) Unexplained cash credits	2,26,000/-
	(iii) Commission paid to secure unexplained cash credits	1,79,569/-

After giving effect to the order of CIT(A), the Assessing Officer after providing the assessee an opportunity to show cause as to why penalty u/s 271(1)(c) should not be levied for concealment of income, and considering the same, rejected the submissions of the assessee and proceeded to levy penalty at the rate of 100% of the tax sought to be evaded on the amounts confirmed in first appeal.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT (A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the notice dated 20/6/2014 has not given a specific charge for penalty. The Ld. AR submitted that the CIT(A) erred in confirming the penalty u/s 271(1)(c) of the Act as under which limb of Section 271(1)(c), the penalty is levied was not mentioned in the notice issued under Section 271(1)(c) read with Section 274 of the Act. The Ld. AR submitted that whether the penalty is for concealment of income or furnishing of inaccurate particulars of income was not evident from the notice nor from the penalty order as well. The Ld. AR further submitted that the penalty provision being quasi judicial, unless there is specific charge there cannot be levy of penalty. Therefore, the order levying penalty is wrong and bad in law. The Ld. AR relied upon the decision of the Hon'ble Supreme Court in case of CIT vs. SSA's Emerald Meadows (2016) 73 Taxman.com 248 (SC) and CIT v. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Kar). The Ld AR further submitted that the Hon'ble Delhi High Court in case of Pr. CIT Vs.

M/s. Sahara India Life Insurance Company Ltd. (ITA No.475/2019 vide order dated 02.08.2019) held that notice issued by the Assessing Officer would be bad in law if it did not specify which limb of Section 271(1)(c) of the penalty proceedings had been initiated.

6. The Ld. DR submitted that the penalty order is very clear that the penalty is imposed on concealment of income and, therefore, merely not mentioning the specific limb of Section 271(1)(c) will not make the penalty order bad in law. The Ld. DR relied upon the Assessment Order, Penalty order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant materials available on record. First of all, in the notice issued u/s 274 r.w.s 271(1)(c) of the Income Tax Act, 1961, there was no specific charges as relates to concealment of income or furnishing of inaccurate particulars of income. From the notice dated 20/06/2014 produced by the Ld. AR during the hearing, it can be seen that the Assessing Officer was not sure under which limb of provisions of Section 271 of the Income Tax Act, 1961, the assessee is liable for penalty. Besides that the Assessment Order also did not specify the charge as to whether there is concealment of income or furnishing of inaccurate particulars of income in assessee's case. Besides this, the present case is relating to search conducted by the Revenue in the premises of the assessee, while the decision relied by the Assessing Officer as well as CIT (A) that of Hon'ble Supreme

Court in case of Mak Data P. Ltd. vs. CIT 358 ITR 593 is relating to survey and there is no issue involved about the notice issued u/s 271(1)(c) r.w.s. 274 of the Act. This case relied by the Revenue is not applicable in the present case due to the distinguishing facts. There is separate provision for penalty in search cases given under the statute after 01.07.2012 that of Section 271AAB of the Act which was totally ignored by the Assessing Officer. Thus, the penalty itself is based on incorrect Section. Therefore we are taking up the contention of the assessee that there is no particular limb mentioned in the notice issued under Section 271(1)(c) r.w.s. 274 of the Act. This issue is squarely covered by the decision of the Hon'ble Supreme Court in case of M/s SSA' Emerald Meadow. The extract of the decision of the Hon'ble Karnataka High Court in M/s SSA' Emerald Meadows are as under which was confirmed by the Hon'ble Apex Court:

*"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 ITA No. 4913/Del/2015 decision of the Division Bench of this Court rendered in the case of COMMISSIONER OF INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565.*

*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."*

*Thus, Additional Ground No. (ii) of the assessee's appeal is allowed. Since the inception of the notice issued u/s 271(1)(c) has become null and void, there is no need to comment on merit of the case. The Penalty u/s 271(1)(c) of the Act is quashed."*

Since in the instant case also the inappropriate words in the penalty notice has not been struck off and the notice does not specify as to under which limb of the provisions, the penalty u/s 271(1)(c) has been initiated, therefore, we are of the considered opinion that the penalty levied u/s 271(1)(c) is not sustainable and has to be deleted. Although the Ld. DR submitted that mere non-striking off of the inappropriate words will not invalidate the penalty proceedings, however, the decision of the Hon'ble Karnataka High Court in the case of SSA'S Emerald Meadows (supra) where the SLP filed by the Revenue has been dismissed is directly on the issue contested herein by the Assessee. Further, when the notice is not mentioning the concealment or the furnishing of inaccurate particulars, the ratio laid down by the Hon'ble High Court in case of M/s. Sahara India Life Insurance Company Ltd. (supra) will be applicable in the present case. The Hon'ble Delhi High Court held as under:

*"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 5<sup>th</sup> 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.”*

Thus, notice under Section 271(1)(c) r.w.s. 274 of the Act itself is bad in law. We, therefore, set-aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied.

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

**Order pronounced in the Open Court on this 21<sup>st</sup> Day of JANUARY, 2021**

**Sd/-**  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 21/01/2021  
R. Naheed \*

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI