

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

**Before Sh. BHAVNESH SAINI, Judicial Member**

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

**(Through Video Conferencing)**

**ITA No. 6193/Del/2015 : Asstt. Year : 2008-09**

M/s Havells India Limited. I, Raj Narain Marg, Civil Lines, Delhi-110054	Vs	Deputy Commissioner of Income Tax (L.T.U.), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No.</b>		

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

**Revenue by : Sh. Prakash Dubey, Sr. DR**

<b>Date of Hearing: 18.01.2021</b>
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<b>Date of Pronouncement: 10.02.2021</b>
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**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 03.07.2012.

2. Following grounds have been raised by the assessee:

*"1. That the impugned order of Id. CIT (A), 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 Id. CIT (Appeals) has erred in confirming the penalty levied u/s 271(1)(c) in respect of addition on account of exchange loss amounting to Rs.3,99,821/- related to capital cost on import of machinery."*

3. The Assessing Officer levied penalty of Rs.3,99,000/- in respect of addition on account of exchange related to capital cost on import of machinery.

4. At the outset, the Id. AR referred to page no. 59 of the paper book showing the penalty notice issued u/s 274 r.w.s. 271 and submitted that the penalty levied is not sustainable in view of the defect in the notice of penalty which is as under:

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

○

DAN: AAACH0351E

To, M/s Havells India Ltd.  
1/7, Ram Kishore Road,  
New Delhi

OFFICE OF THE  
ASSTT. COMMISSIONER OF INCOME TAX,  
LARGE TAXPAYER UNIT, DELHI  
NBCC PLAZA, PUSHP VIHAR,  
SAKET, NEW DELHI.110017

Dt. 23/12/2010

Whereas in the cause of proceeding me for the assessment year 2008-09  
it appears to me that you.

\*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given section 22(1)/22(2)/34 of the Income-tax Act,1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income -Tax Act,1961, No. \_\_\_\_\_ dated \_\_\_\_\_ or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.

\*have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Income- Tax Act, 1922 or under section 142(1)/143(2) of the Income Tax Act, 1961. No. \_\_\_\_\_ dated \_\_\_\_\_

\*have concealed the particulars of your Income or \_\_\_\_\_ furnish inaccurate particulars of such Income.

You are hereby requested to appear before me at 12.30 AM./P.M. on 10/01/2011 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income -Tax Act,1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.

5. We have gone through the record before us. We have gone through the facts of the case and find that the Assessing Officer has not made it clear under which limb of the provisions of Section 271(1)(c) of the Act, the penalty is being levied. There is glaring discrepancy between initiation of the penalty and levy of penalty. This is a jurisdictional issue arising out of the penalty order before us.

6. The Ld. Departmental Representative heavily relied on the judgment of Sundaram Finance Ltd. Vs CIT (2018) 403 ITR 407 (Madras) and argued that the Hon'ble High Court held that where notice did not show the nature of default, it was a question of fact. The assessee has understood purport and import of the notice, hence, no prejudice was caused to the assessee.

7. The judgment of the Hon'ble Jurisdictional High Court in the case of Sahara India Life Insurance Company Ltd. in ITA No. 426/2019 dated 02.08.2019 wherein the Hon'ble 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 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."*

8. Similar view has been taken by the Hon'ble Supreme Court in the case of SSA's Emerald Meadows (CC No.11485/2016).

9. Hence, respectfully following the judgment of the Hon'ble Jurisdictional High Court and Hon'ble Apex Court, we hereby hold that the penalty levied by the Assessing Officer cannot be held to be legally valid in the eyes of law.

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

Order Pronounced in the Open Court on 10/02/2021.

Sd/-

**(Bhavnesb Saini)**  
**JUDICIAL MEMBER**

**Dated: 10/02/2021**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**ACCOUNTANT MEMBER**

**ASSISTANT REGISTRAR**