

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6436 /Del./2017
(Assessment Year : 2009-10)**

M/s. FCI Asia Pte Ltd.,
(now known as Amphenol FCI Asia
Pte Ltd.),
Kampong Ampat, #04-01/04, KA Place,
Singapore – 368 328.

vs. DCIT, Circle 1(3)(1),
New Delhi.

(PAN : AABCF5252B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ravi Sharma, Advocate
REVENUE BY : Shri Samporn Anand Seth, Senior DR

Date of Hearing : 25.02.2021
Date of Order : 03.03.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. FCI Asia Pte Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 17.07.2017 passed by the Commissioner of Income-tax (Appeals)-42, New Delhi affirming the penalty order dated 10.03.2016 passed under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2009-10 on the grounds inter alia that :-

“1. The Ld. CIT(A) and. Ld. AO have erred in finalizing an order of assessment which is against the principles of natural justice, violative of provisions of the Act, devoid of merits, without appreciating the fact involved, without appreciating the documents submitted in proper light, without conducting adequate inquiries and as such is without jurisdiction.

2. The Ld. CIT(A) and Ld. AO erred in law and on facts by levying of penalty under section 271(1)(c) of the Act on interest income where in fact the Appellant had voluntarily disclosed the said income and has not concealed any facts, nor disclosed any inaccurate particulars and has in fact disclosed the nature of transaction in the statutory records of the appellant.

3. The Ld. CIT(A) and Ld. AO erred in law and on facts by levying penalty under section 271(1)(c) of the Act, when the notice did not specify as to whether it was prompted by concealment of particulars of income or furnishing of inaccurate particulars of income.

4. The Ld. CIT(A) and Ld. AO erred in law and on facts by levying penalty under section 271(1)(c) of the Act on interest income, without any explicit satisfaction being recorded in the assessment order.

5. The Ld. CIT(A) and the Ld. AO failed to appreciate the fact that the Appellant voluntarily disclosed the interest income and did not have any intention of conscious concealment of true particulars of income or deliberate furnishing of inaccurate particulars.

6. The Ld. CIT(A) and the Ld. AO, having accepted the voluntary disallowance made by the Appellant, have failed to demonstrate as to how the Appellant has concealed the income or furnished inaccurate particulars of income.

7. The Ld. CIT(A) and the Ld. AO failed to appreciate the fact that merely because the Appellant did not prefer an appeal regarding the said amount, would not tantamount to concealment of income and does not automatically lead to the imposition of penalty under section 271(1)(c) of the Act.

8. The Ld. CIT(A) and Ld. AO have erred in law and facts, by passing the time barred penalty order under section 275(1)(c) of the Act wherein the interest income was never a subject matter of the quantum appeal before the Ld. CIT(A).”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment order framed

under section 143(3)/144C of the Act at an income of Rs.5,75,90,635/- by making an addition of Rs.1,47,39,918/- on account of interest income chargeable to the taxable income of the assessee and by making addition of Rs.3,92,86,277/- on account of royalty/fee for technical services, penalty proceedings were initiated under section 271(1)(c) of the Act. Declining the contentions raised by the assessee, AO levied the penalty of Rs.22,10,988/- @ 100% of the tax sought to be evaded.

3. Assessee carried the matter before the Id. CIT (A) by way of filing an appeal who has confirmed the penalty by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. AR for the assessee challenging the impugned order passed by the Id. CIT (A) confirming the penalty levied by the AO u/s 271(1)(c) contended inter alia that the AO has failed to record a valid satisfaction so as to impose penalty u/s 271(1)(c); that there is no concealment of income by way of furnishing of inaccurate particulars of income on the part of the assessee as it has suo motu

rectified his mistake by writing a letter to AO by bringing interest income to be charged to the income-tax; that the AO has failed to specify in the show-cause notice issued u/s 271(1)(c)/274 of the Act if the assessee has concealed the particulars of income or has furnished inaccurate particulars of income and relied upon the decisions of **Hon'ble Karnataka High Court in CIT vs. SSA's Emerald Meadows -73 taxmann.com 241 (Kar.) (Revenue's SLP dismissed in 242 taxman 180) and Hon'ble High Court of Delhi in Pr. CIT vs. Sahara India Life Insurance Company Ltd. in ITA 475/2019 order dated 02.08.2019.**

6. However, on the other hand, ld. DR for the Revenue to repel the arguments addressed by the ld. AR for the assessee contended that by filing return of income beyond the prescribed period and by not showing the interest income chargeable to tax, it is a clear case of furnishing of inaccurate particulars of income; that right from initiating penalty proceedings assessee has been specifically intimated as to furnishing of inaccurate particulars of income.

7. In the backdrop of the aforesaid facts and circumstances of the case, order passed by the lower authorities and arguments addressed by the authorized representatives of both the parties to the appeal, the sole question arises for determination in this case is:-

“as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income for and during assessment proceedings?”

8. Undisputedly, assessee had filed belated return of income for the year under assessment i.e. on 31.03.2011 declaring nil income and thereby claimed a refund of Rs.63,43,661/-. It is also not in dispute that assessee vide letter dated 30.06.2011 intimated AO that due to inadvertent mistake interest income of Rs.1,11,75,478/- could not be reflected separately in the return of income and taxable income of the assessee company has been restated at Rs.1,11,75,478/- and requested to reduce the claim of refund to Rs.46,67,339/- as against earlier claim of refund of Rs.63,43,661/-. It is also not in dispute that since the return of income was filed by the assessee beyond the statutory deadline, it had no opportunity to revise the same. It is also not in dispute that letter dated 30.06.2011 was written by the assessee to the AO prior to the scrutiny notice dated 29.08.2011 issued u/s 143 (2) of the Act. It is also not in dispute that penalty has been levied by the AO u/s 271(1)(c) on account of concealment of income and furnishing of inaccurate particulars of qua interest income.

9. When we examine the assessment order passed by the AO it is apparently clear that in para 12 of the assessment order, AO has recorded his satisfaction to initiate the penalty proceedings for

furnishing inaccurate particulars of income by not offering the receipts as “fee for technical services” by filing the return of income which is extracted for ready perusal as under :-

“12. As the assessee has furnished inaccurate particulars of income by not offering the receipts as FTS while filing the return of income, therefore, I consider it a fit case for initiation of penalty proceedings u/s 271(1)(c) of the Act.”

10. At the same time, when we examine paras 15 & 16 of the penalty order it is beyond doubt that the penalty has been levied for concealing the particulars of income for not offering the interest income to tax, whereas AO has specifically recorded his satisfaction to initiate the penalty proceedings for “furnishing of inaccurate particulars of income” by not offering the income as “fee for technical services” (FTS). It is beyond comprehension as to how he has proceeded to levy the penalty for “furnishing inaccurate particulars of income by not offering the interest income to tax” qua which there was no satisfaction in the assessment order. So, on ground of invalid satisfaction rather no satisfaction recorded by the AO, penalty levied on the assessee is not sustainable in the eyes of law.

11. Furthermore, when well before issuance of notice u/s 143(2) of the Act assessee has duly intimated the AO that due to inadvertent mistake, he could not bring the interest income to tax

and sought to reduce his claim of refund to Rs.46,67,339/- as against the earlier refund of Rs.63,43,661/- claimed in the return of income, there is no furnishing of inaccurate particulars of income, particularly when assessee was not having opportunity of filing the revised return.

12. Moreover, AO has failed to specify in the show-cause notice issued u/s 271(1)(c) read with section 274 of the Act if assessee has concealed particulars of income or has furnished inaccurate particulars of income. In order to proceed further, we would like to peruse the notice dated 06.02.2012 issued by AO u/s 274 read with section 271(1)(c) of the Act to initiate the penalty proceedings which is extracted as under for ready perusal:-

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

**Income Tax Office,
New Delhi.
Dated: 06.02..2012**

**To
FCI Asia Pte Ltd.,
138, 17, Corporate Office,
Robinson Road, Singapore.**

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 142(1)/143(2) of the Income Tax Act, 1961 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 11.45 AM/PM on 21.02.2012 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 representatives 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.

Sd/-
Assessing Officer,
Asstt. Director of Income Tax,
Circle 1(2), Room No.410,
(Intl. Taxation), Drumshape Bldg.
New Delhi.”

13. Bare perusal of the notice issued u/s 274 read with section 271(1)(c) of the Act, extracted above, in order to initiate the penalty proceedings against the assessee goes to prove that the AO himself was not aware / sure as to whether he is issuing notice to initiate the penalty proceedings either for “concealment of particulars of income” or “furnishing of inaccurate particulars of such income” by the assessee rather issued vague and ambiguous notice by incorporating both the limbs of section 271(1)(c). When the charge is to be framed against any person so as to move the penal provisions against him/her, he/she is required to be specifically made aware of the charges to be leveled against him/her.

14. Hon’ble Apex Court in case of **CIT vs. SSA’s Emerald Meadows - (2016) 73 taxmann.com 248 (SC)** while dismissing the SLP filed by the Revenue quashing the penalty by the Tribunal as well as Hon’ble High Court on ground of unspecified notice has held as under:-

“Section 274, read with section 271(1)(c), of the Income-tax Act, 1961 - Penalty - Procedure for imposition of (Conditions precedent) - Assessment year 2009-10 - Tribunal, relying on decision of Division Bench of Karnataka High Court rendered in case of CIT v. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565/218 Taxman 423/35 taxmann.com 250, allowed appeal of assessee holding that notice issued by Assessing Officer under section 274 read with section 271 (1)(c) was bad in law, as it did not specify under which limb of section 271 (1)(c) penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income - High Court held that matter was covered by aforesaid decision of Division Bench and, therefore, there was no substantial question of law arising for determination - Whether since there was no merit in SLP filed by revenue, same was liable to be dismissed - Held, yes [Para 2] [In favour of assessee]”

15. Hon’ble Delhi High Court in case of **Pr. CIT vs. Sahara India Life Insurance Company Ltd.** (supra) while deciding the identical issue 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 of2016 by order dated 5th August, 2016.”

16. Following the decisions rendered in the cases of **CIT vs. SSA’s Emerald Meadows and Pr. CIT vs. Sahara India Life Insurance Company Ltd.** (supra) by the Hon’ble Supreme Court

and Hon'ble High Court, we are of the considered view that when the notice issued by the AO is bad in law being vague and ambiguous having not specified under which limb of section 271(1)(c) of the Act the same has been issued, the penalty proceedings initiated u/s 271(1)(c) are not sustainable.

16. In view of what has been discussed above, following the decisions rendered by Hon'ble Supreme Court and Hon'ble High Court discussed in the preceding paras, we are of the considered view that initiating penalty on the basis of invalid satisfaction and on the basis of vague and ambiguous notice issued u/s 271(1)(c) read with section 274 is not sustainable in the eyes of law, hence liable to be deleted. Accordingly, question framed is answered in the negative and penalty levied by the AO and sustained by the ld.CIT (A) is ordered to be deleted. Consequently, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 3rd day of March, 2021.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 3rd day of March, 2021.
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-42, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.