

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
ITA.No.6427/Del./2017
Assessment Year 2008-2009

Shri Abhit Sud, 2A, Shankaracharya Marg, Civil Lines, Delhi – 110 054. PAN AOGPS7293P	vs.	The DCIT, Circle-16(2), C.R. Building, New Delhi PIN 110 002
(Appellant)		(Respondent)

ITA.No.6428/Del./2017
Assessment Year 2008-2009

Shri Ashit Sud, 2A, Shankaracharya Marg, Civil Lines, Delhi – 110 054. PAN AOGPS7315Q	vs.	The DCIT, Circle-16(2), C.R. Building, New Delhi PIN 110 002
(Appellant)		(Respondent)

For Assessee :	Shri Gaurav Bansal, C.A.
For Revenue :	Shri Ashok Gautam, Sr. DR

Date of Hearing :	23.03.2021
Date of Pronouncement :	25.03.2021

ORDER

PER BHAVNESH SAINI, J.M.

Both the appeals by different Assesseees are directed against the different Orders of the Ld. CIT(A)-38, New Delhi, Dated 28.07.2017, for the A.Y. 2008-2009,

challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. We have heard the Learned Representative of both the parties and perused the material available on record.

3. Learned Counsel for the Assessee at the outset submitted that the A.O. issued show cause notice Dated 10.12.2010 under section 271 read with section 274 of the I.T. Act, 1961 before levy of the penalty in which the A.O. has mentioned as under :

“Have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of Explanation 1, 2, 3, 4 and 5.”

3.1. He has, therefore submitted that the A.O. has not mentioned as to for which limb of Section 271(1)(c) of the I.T. Act, 1961 the penalty proceedings have been initiated i.e., whether for concealment of particulars of income or for furnishing inaccurate particulars of income. Therefore, the

penalty proceedings are vitiated and are liable to be quashed on this reason alone. He has, submitted that an identical issue have been considered by ITAT, Delhi C-Bench, Delhi in the case of M/s. Bharat Immunological & Biological Corporation Ltd., Bulandshahr vs., The DCIT, Circle, Bulandshahr in ITA.No.5538/Del./2015 for the A.Y. 2008-2009 and penalty Order have been quashed vide Order Dated 29.04.2019. The same reads as under :

*“IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES “C”: DELHI*

*BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER*

*ITA.No.5538/Del./2015
Assessment Year 2008-2009*

<i>M/s. Bharat Immunological & Biological Corporation Ltd., Bulandshahr PAN AABCB4550C C/o. RRA TAXINDIA, D-28, South Extension, Part-I, New Delhi-110049</i>	<i>vs.,</i>	<i>The Dy. CIT, Circle, Bulandshahr.</i>
<i>(Appellant)</i>		<i>(Respondent)</i>

<i>For Assessee :</i>	<i>Dr. Rakesh Gupta, And Shri Somil Aggarwal, Advocates</i>
<i>For Revenue :</i>	<i>Smt. Rinku Singh, Sr. D.R.</i>

<i>Date of Hearing :</i>	<i>29.04.2019</i>
<i>Date of Pronouncement :</i>	<i>29.04.2019</i>

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Ghaziabad, Dated 29.06.2015, for the A.Y. 2008-2009, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. *In this case, the assessee filed return of income declaring loss of Rs.5.75 crores. The A.O. noted that provision for bad debt of Rs.1,01,81,411/- was debited to P & L account. The A.O. noted that such provision is not allowable unless it is ascertained liability. The A.O. accordingly made addition of the amount and assessed the net loss at Rs.4.74 crores. The A.O. on the aforesaid addition levied the penalty under section 271(1)(c) of the I.T. Act, 1961. The Ld. CIT(A) dismissed the appeal of assessee.*

3. *Learned Counsel for the Assessee referred to the chart to show that assessee has been suffering loss continuously. Learned Counsel for the Assessee referred to*

several replies filed with the Income Tax Authorities as well as to the concerned Department of the Government of India for release of the amount in question. He has referred to PB-79 which is show cause notice issued before levy of the penalty, in which A.O. has not mentioned anything as to for which limb of Section 271(1)(c) of the I.T. Act, penalty have been proposed against the assessee. He has also referred to show cause notice dated 27.12.2010 under section 274 read with section 271(1)(c) of the I.T. Act issued prior to levy of the penalty, in which the A.O. has stated as under :

*“have concealed the particulars of your income or
furnished inaccurate particulars of such income.”*

3.1. *Learned Counsel for the Assessee, therefore, submitted that A.O. has not pointed-out as to for which limb of Section 271(1)(c) of the I.T. Act penalty have been initiated. Therefore, levy of penalty is illegal and bad in law and in support of the contention relied upon several decisions of the Tribunal and Judgment of the Hon’ble Supreme Court in the*

case of CIT & Another vs. M/s. SSAs Emerald Meadows reported in 73 taxmann.com 248.

4. *On the other hand, Ld. D.R. relied upon the Orders of the authorities below.*

5. *After considering the rival submissions, we are of the view that penalty is not leviable in the matter. The A.O. issued show cause notice dated 27th December, 2010 before levy of the penalty against the assessee. However, the A.O. in its show cause notice failed to specify in 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 inaccurate particulars of income, as rightly pointed-out by the Learned Counsel for the Assessee. The entire penalty proceedings are, therefore, vitiated and no penalty is leviable. On this score itself similar view is taken by Hon'ble Karnataka High Court in the case of CIT vs. M/s. SSAs Emerald Meadows 73 taxmann.com 241. This decision is confirmed by the Hon'ble Supreme Court reported in 73 taxmann.com 248. In this view of the matter, the orders of the authorities below are set aside and penalty is cancelled.*

5. *In the result, appeal of assessee is allowed.”*

3.2. He has further submitted that Hon'ble Delhi High Court also in the case of Pr. CIT vs., M/s. Sahara India Life Insurance Company Ltd in Group cases reported in 2019-(8)-TMI-409-(Del.)-(HC) in Para-21 following the same decision 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 359ITR 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 vs. 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."

3.3. Learned Counsel for the Assessee, therefore, submitted that penalty order may be set aside and penalty order may be cancelled in both the appeals.

4. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

5. After considering the rival submissions, we are of the view that the issue is covered by the Order of ITAT, Delhi Bench in the case of M/s. Bharat Immunological & Biological Corporation Ltd., Bulandshahr vs., The DCIT, Circle, Bulandshahr (supra) and Judgment of Hon'ble Delhi High Court also in the case of Pr. CIT vs., M/s. Sahara India Life Insurance Company Ltd., (supra). It is not in dispute that in both the appeals the A.O. has issued an identical show cause notice Dated 10.12.2010 mentioning the fact as

reproduced above in which A.O. has not pointed-out as to for which limb of Section 271(1)(c) of the I.T. Act, 1961, penalty proceedings are initiated i.e., whether for concealment of particulars of income or for furnishing inaccurate particulars of income. Therefore, the penalty notice is invalid and bad in Law and as such the entire proceedings are vitiated and no penalty is leviable against the assessee. The same issue have been considered by ITAT, Delhi Bench in the case of M/s. Bharat Immunological & Biological Corporation Ltd., Bulandshahr vs., The DCIT, Circle, Bulandshahr (supra) and penalty have been cancelled. The same view have been taken by Hon'ble Delhi High Court also in the case of Pr. CIT vs., M/s. Sahara India Life Insurance Company Ltd., (supra). Following the above decisions, we set aside the Orders of the authorities below and cancel the penalty in both the appeals. Accordingly, both the appeals of the assessee are allowed.

6. In the result, both the appeals of the Assessee are allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 25th March, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.