

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A. No. 5114/DEL/2017 (A.Y 2006-07)
I.T.A. No. 5115/DEL/2017 (A.Y 2008-09)
I.T.A. No. 5116/DEL/2017 (A.Y 2009-10)
I.T.A. No. 5117/DEL/2017 (A.Y 2010-11)
(THROUGH VIDEO CONFERENCING)**

Mona Infotech Pvt. Ltd. C-30, Panchsheel Enclave, New Delhi AAECM1412F (APPELLANT)	Vs	ACIT Central Circle-6 New Delhi (RESPONDENT)
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Appellant by	SH. P. C Yadav, Adv
Respondent by	Sh. Gaurav Pundir, Sr. DR

Date of Hearing	27.07.2021
Date of Pronouncement	11.08.2021

ORDER

PER SUCHITRA KAMBLE, JM

These four appeals are filed by the assessee against the order dated 29/06/2017 passed by CIT(A)-24, New Delhi for assessment year 2006-07, 2008-09, 2009-10 & 2010-11 respectively.

2. The grounds of appeal are as under:-

I.T.A. No. 5114/DEL/2017 (A.Y 2006-07)

“1. That the Ld. GIT (Appeal) has erred in upholding the penalty of Rs.9,08,820/-, 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.9,08,820/-,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 Grounds

“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.”

I.T.A. No. 5115/DEL/2017 (A.Y 2008-09)

“1. *That the Ld. GIT (Appeal) has erred in upholding the penalty of Rs.1,18,656/- 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.1,18,656/- 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.*

I.T.A. No. 5116/DEL/2017 (A.Y 2009-10)

“1. *That the Ld. GIT (Appeal) has erred in upholding the penalty of Rs.30,900/- 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.30,900/- 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.*

I.T.A. No. 5117/DEL/2017 (A.Y 2010-11)

“1. That the Ld. GIT (Appeal) has erred in upholding the penalty of Rs. 30,900/- 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.30,900/- 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.”

3. A search was conducted in Rock land Group as a result of which proceedings u/s 153A were initiated against the assessee and assessment u/s 153A was framed by the Assessing Officer vide his order dated 20/6/2014. During the course of assessment proceedings, the Assessing Officer made following additions:-

A.Y & quantum	Nature of addition and position after CIT(A) order	Remarks
2006-07 (27,00,000/-)	Additional Income disclosed before Settlement Commission	Assessment were under section 153A and nothing was found in search
2008-09(2,00,000/-)	Additional Income disclosed before Settlement Commission	
2009-10(1,00,000/-)	Additional Income disclosed before Settlement Commission	
2010-11(1,00,000/-)	Additional Income disclosed before Settlement Commission	

Notice dated 20/06/2014 u/s 274 read with Section 271(1)(c) was issued to the assessee relating to penalty. In the meanwhile, additions made in quantum proceedings we have heard both the parties and perused the material

available on record sustain by the CIT(A). The penalty u/s 271(1)(c) was imposed for each year as follows:-

A.Y	Amount of Penalty	Section
2006-07	9,08,820/-	271(1)(c)
2008-09	1,18,656/-	271(1)(c)
2009-10	30,900/-	271(1)(c)
2010-11	30,900/-	271(1)(c)

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 Assessing Officer has simply initiated penalty proceedings without recording his clear satisfaction and without levying the specific charge against the assessee. The requirement of recording of satisfaction now dispense with by legislature by insertion of Clause 1B. However, there are many judgments wherein it has been held that requirement of satisfaction of the Assessing Officer is sine qua none even after amendment. The levy of specific charge against the assessee in the body of assessment order or in the notice of penalty issued on the date of completion of assessment proceedings is sine qua none for affirming the jurisdiction of Section 271(1)(c) of the Act. It is the case of the Revenue that both charges i.e. furnishing of inaccurate particulars and concealment of income are applicable in this case. But the notice issued by the Revenue contain that there is concealment of particulars of income or furnished inaccurate particulars of income. Thus, no specific charge was pointed out by the Assessing Officer in penalty notice and hence, addition grounds be admitted. The Ld. AR relied upon the decision of the Hon'ble Supreme Court in case of SSA Emerald and the decision of the Hon'ble Delhi High Court in case of Sahara India that the notice issued for

assuming jurisdiction of 271(1)(c) would be unambiguous. The judgments were considered by the Coordinate Bench in assessee's own case in ITA No. 5088/Del/2017 dated 21/1/2021. The Ld. AR further submitted that the Third Member Bench of the Tribunal has examined the issue of specific charge in notice of penalty in a very extensive manner and held that in case the Assessing Officer would of the view that both charges are applicable then he should use the expression and between the charge of concealment and inaccurate particulars. The Ld. AR relied upon the decision of HPCL vs. Addl. CIT in ITA No. 554 & 555/Del/2017. The Ld. AR submitted that the perusal of the penalty notice and order would show that there was no specific charge against the assessee and hence penalty cannot be sustained. The Coordinate Bench of the Tribunal in case of Akhil Meditech and Radhika Surgical Pvt. Ltd. wherein the facts are similar and the assessee therein was also assessed due to the search action in Rockland Group has quashed the proceedings of Section 271(1)(c). Therefore, the penalty levied is not sustainable as the Assessing Officer has initiated the penalty on some other charge and levied on some other charge. It is settled position of law that concealment of income and furnishing of inaccurate particulars are two separate things and the Assessing Officer has to specify the charge under which he is going to impose penalty on the assessee. Thus, the Ld. AR prayed that the appeals of the assessee may be allowed.

6. The Ld. DR submitted that the penalty order is very clear and 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 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 (A.Y. 2006-07) 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 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.”*

In fact, in identical facts in respect of search conducted in Rockland group of cases on 06.09.2011 and the applications filed for settlement u/s 245C of the Act before the Income Tax Settlement Commission in the capacity of related person in case of Radhika Surgical Pvt. Ltd. vs. ACIT (ITA No. 5088/Del/2017 order dated 21.01.2021), the Tribunal has dealt the issue of penalty itself. The same was decided in favour of the assessee therein, thereby deleting the penalty. In fact, in the present assessee's case the Ld. DR could not point out any distinguishing facts to that of the decision of the Tribunal in Radhika Surgical (Supra). 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. All these four appeals are identical and the issue contested there is common, therefore, the appeals are allowed.

8. In result, all the appeals of the assessee are allowed.

Order pronounced in the Open Court on this 11th Day of August, 2021.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 11/08/2021

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI