

**INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "F": NEW DELHI ]**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)**

ITA. Nos. 5140 TO 5145/Del/2017  
(Assessment Years: 2006-07 TO 2011-12)

Rockland Hotels Ltd., B-207, C. R. Park, New Delhi - 110 019. PAN: AADCR1869C	Vs.	ACIT, Central Circle : 6, New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri P. C. Yadav, Advocate
Department by:	Shri Govind Singhal, Sr. D.R.;
Date of Hearing :	04/08/2021
Date of pronouncement :	04/08/2021

**ORDER**

**PER BENCH :**

1. These are the six appeals are filed by the assessee for assessment years 2006-07 to 2011-12 against the penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) confirmed by the ld. CIT (Appeals) raising the following common grounds of appeal (except the amounts):-

*“ 1. That the Ld. CIT (Appeal) has erred in upholding the penalty of Rs.7,10,700/- 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.7,10,700/-, 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.*

*4. That the Appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the Appeal. “*

2. In all these appeals penalty under Section 271(1)(c) levied by the Id. Assessing Officer and confirmed by the Id. CIT (Appeals) is under challenge. The assessee is challenging the initiation of the penalty proceedings itself on the ground that notice issued under Section 274 read with Section 271(1)(c) of the Act was vague as such notice did not specify the limb under which the penalty is leviable.
3. The fact shows that a search was conducted on Rockland Group on 6.09.2011 and subsequently the proceedings under Section 153A of the Act culminating into the assessment was made by the Id. Assessing Officer vide order dated 20<sup>th</sup> June, 2014. For various assessment years, the income disclosed before the Settlement Commission was added as the income of the assessee in view of the fact that such income was not offered by the assessee in its return of income for all these respective years. Further, there were also additions with respect to unexplained cash credits for all these years. The Id. Assessing Officer initiated the penalty proceedings under Section 271(1)(c) of the Act. Thereafter the penalty proceedings under Section 271(1)(c) of the Act started.
4. A search and seizure operation under Section 132 of the Act was conducted at the business premises of the assessee as well as the residential premises of Directors of the assessee on 6.09.2011. Notice under Section 153A of the Act was issued in response to which assessee filed 'NIL' return and assessment under Section 153A of the Act got concluded. During the pendency of the assessment proceedings under Section 153A of the Act the assessee approached the Settlement Commission and offered additional income in all these years. The application of the assessee was rejected by the Settlement Commission therefore the assessments got completed under Section 153A of the Act. In the assessment, the disclosure made by the assessee before the Settlement Commission, which was not offered in the return of income filed, was added as income of the assessee and further addition on account of unexplained credit was also made. The penalty proceedings were also initiated. Against the assessment order assessee preferred appeal before the Id. CIT (Appeals). However, assessee did not prosecute the appeals and applied for withdrawal of the same. The Id. CIT

(Appeals) allowed the application.

5. Based on this the penalty proceedings commenced. During the penalty proceedings assessee submitted that additional income offered by the assessee before the Settlement Commission was with a spirit of the settlement of the dispute and, therefore, no penalty should be levied. It was further stated that other additions made in the hands of the assessee are on protective basis. The ld. Assessing Officer rejected the contention of the assessee and stated that addition on account of cash credit is made on substantive basis and not on protective basis and further the income offered before the Settlement Commission has also been rightly taxed. It was further held that the assessee has furnished inaccurate particulars of its income as well as concealed its income and, therefore, liable to penalty under Section 271(1)(c) of the Act. Based on this the Assessing Officer levied a penalty of Rs.7,10,000/- for assessment year 2006-07, Rs.2,35,620/- for assessment year 2007-08 and Rs.3,09,000/- for assessment years 2009-10 to 2011-12.
6. Aggrieved by the order of the ld. Assessing officer assessee preferred appeal before the ld. CIT (Appeals) challenging the same on the jurisdictional aspect as well as on the merits of the case. The ld. CIT (Appeals) confirmed the order of the ld. Assessing Officer and, therefore, assessee is in appeal before us for all these years.
5. The ld. AR submitted that in the assessment orders the Assessing Officer has simply initiated the penalty proceedings without recording clear satisfaction and on the specific charge against the assessee. He further submitted that the penalty has been levied in the penalty orders on both the charges and, therefore, the penalty orders are not sustainable in law.
6. During the course of hearing, he also raised an additional ground of appeal as under:-

*“ On the facts and 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 Section 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. “*

7. He submitted that the above ground goes to the root of the matter, legal in nature, no fresh facts are required to be investigated, and, therefore, same should be admitted. The Id. AR submitted that even otherwise the ground raised by the assessee covers this aspect. However, with abundant caution same is raised. He submitted that identical grounds are raised in all these years.
8. The Id. DR vehemently objected to the same and stated that same is not raised before the lower authorities and, therefore, it should not be admitted at this stage.
9. We have carefully considered the rival contentions. The ground raised by the assessee is a jurisdictional ground, which can be raised at any point of time during the pendency of the appeal. No fresh facts are required to be investigated and the issue raised in the additional ground goes to the root of the matter. In view of this, we admit the additional ground raised by the assessee.
10. As the additional ground is admitted and is jurisdictional, the same was disposed of first.
11. The Id. AR has submitted the certified copies of notice issued under Section 274 of the Act for all these years dated 20<sup>th</sup> June, 2014. The claim of the Id. AR is that in all these notice the Id. Assessing Officer has not struck off any of the twin limbs of the penalty under Section 271(1)(c) of the Act. It is further stated that Hon'ble Karnataka High Court in case of CIT Vs. SSA Emeralds 73 taxmann.com 241 (Kar.) has held that such notice issued under Section 274 of the Act suffers from infirmity and based on it , penalty cannot be levied. Hon'ble Delhi High Court also in the case of CIT Vs. Sahara India Life Insurance Co. Ltd. has held so. Therefore, the issue is squarely covered in favour of the assessee.
12. The Id. DR submitted that the notice issued is a non-statutory notice and, therefore, any defect therein cannot result into holding the penalty proceedings it is invalid.
13. We have carefully considered the rival contentions and perused the orders

of the lower authorities. We have also perused the certified copies of the notices issued under Section 274 read with Section 271(1)(c) of the Act dated 20<sup>th</sup> June, 2014 for all these years wherein it is a fact that the Id. AR has not struck off one of the two limbs for levy of the penalty. In the case of CIT Vs. SSA Emeralds (supra). The Hon'ble high Court dismissed the appeal of the Revenue on this score only. Further Hon'ble Delhi High Court in CIT Vs. Sahara India Life Insurance Co. Ltd. ITA 475/2019 in order dated 2.08.2019 has 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.”

14. In view of the above since the issue of notice itself is bad in law, it vitiates entire penalty proceedings and are liable to be quashed and thus, all the six penalty proceedings for respective years are quashed. The additional ground of the assessee is allowed.
15. In the result, all the six appeals filed by the assessee are allowed.

Order pronounced in the open court on : 04/08/2021.

**Sd/-**  
**( KUL BHARAT )**  
**JUDICIAL MEMBER**

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated : 04/08/2021.  
\*MEHTA\*

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	04.08.2021
Date on which the typed draft is placed before the dictating member	04.08.2021
Date on which the typed draft is placed before the other member	04.08.2021
Date on which the approved draft comes to the Sr. PS/ PS	04.08.2021
Date on which the fair order is placed before the dictating member for pronouncement	04.08.2021
Date on which the fair order comes back to the Sr. PS/ PS	04.08.2021
Date on which the final order is uploaded on the website of ITAT	04.08.2021
date on which the file goes to the Bench Clerk	04.08.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	