

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

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

**(THROUGH VIDEO CONFERENCE)**

**ITA No.5105/Del./2017  
(ASSESSMENT YEAR : 2008-09)**

**ITA No.5106/Del./2017  
(ASSESSMENT YEAR : 2009-10)**

**ITA No.5107/Del./2017  
(ASSESSMENT YEAR : 2010-11)**

**ITA No.5108/Del./2017  
(ASSESSMENT YEAR : 2011-12)**

**ITA No.5109/Del./2017  
(ASSESSMENT YEAR : 2012-13)**

M/s. Hitesh Construction Pvt. Ltd., vs. ACIT, Central Circle 6,  
C – 30, Panchsheel Enclave, New Delhi.  
New Delhi – 110 017.

**(PAN : AABCH8078F)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri P.C. Yadav, Advocate  
REVENUE BY : Ms. Anima Burnwal, Senior DR

Date of Hearing : 12.08.2021  
Date of Order : 25.08.2021

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Aforesaid interconnected appeals filed by the assessee challenging the impugned orders passed by the Id. CIT (A) bearing common question of law and facts are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, M/s. Hitesh Construction Pvt. Ltd. (hereinafter referred to as the 'assessee') by filing the present appeals sought to set aside the impugned orders all dated 29.06.2017 passed by the Commissioner of Income - tax (Appeals)-24, New Delhi confirming the penalty orders dated 29.03.2017, 30.03.2017, 29.03.2017, 29.03.2017 & 29.03.2017 passed under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') qua the Assessment Years 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13 respectively on the identical grounds except the difference of amount of penalty levied by the AO and confirmed by the Id. CIT (A) inter alia that :-

**“1. That the Ld. CIT (Appeal) has erred in upholding the penalty (Rs.10,14,082/-, Rs.35,844/-, Rs.30,900/-, Rs.30,900/- & Rs.,30,900/- for AYs 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13) 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 (Rs.10,14,082/-, Rs.35,844/-, Rs.30,900/-, Rs.30,900/- & Rs.,30,900/- for AYs 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13) 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. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment orders all dated 20.06.2014 framed u/s 153A of the Act for AYs 2008-09, 2009-10, 2010-11 & 2011-12 and u/s 143 (3) of the Act for AY 2012-13, assessments were framed at an income of Rs.Rs.4,47,19,600/- & Rs.17,52,600/- for AYs 2008-09 & 2009-10 respectively by making additions as under :-

<b>Assessment Year</b>	<b>Head of addition</b>	<b>Amount (in Rs.)</b>
<b>2008-09</b>	(i) Disclosure in settlement application	<b>30,00,000</b>
	(ii) Unexplained cash credits	<b>1,57,93,990</b>
	(iii) Commission paid to secure unexplained cash credits	<b>4,73,816</b>
<b>2009-10</b>	(iv) Disclosure in settlement application	<b>1,00,000</b>
	(v) Unexplained cash credits	<b>16,00,000</b>
	(vi) Commission paid to secure unexplained cash credits	<b>48,000</b>

And at an income of Rs1,00,000/- each for AYs 2010-11, 2011-12 & 2011-12 respectively by making addition of Rs.1,00,000/- on account of disclosure made by the assessee before the Income Tax Settlement Commission. Penalty proceedings have been initiated against the assessee u/s 271(1)(c) of the Act. Declining the

contentions raised by the assessee, AO proceeded to levy the penalty to the tune of Rs.10,14,082/-, Rs.35,844/-, Rs.30,900/-, Rs.30,900/- & Rs.,30,900/- for AYs 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13 respectively @ 100% of the tax sought to be evaded.

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

5. We have heard the Id. Authorized Representatives of the parties to the appeals, 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.

6. By moving a separate application, assessee company sought to raise additional ground on the ground that the same go to the root of the case which is as under :-

**“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 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. Keeping in view the fact that the additional ground sought to be raised by the assessee, which is a legal ground and can be raised at any stage of the proceedings, is otherwise necessary for complete adjudication of the controversy at hand, the application for additional ground is hereby allowed.

8. Ld. AR for the assessee challenging the impugned orders contended inter alia that in order to initiate the penalty proceedings, 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**; and that all these appeals are covered by assessee's group company cases which were also searched during search and seizure operation conducted on 06.09.2011, whereby penalty levied has been deleted by the **coordinate Bench of the Tribunal in case of ITA No5090, 5091& 5092/Del/2017 for AYs 2010-11, 2011-12 & 2012-13 in**

**Radhika Surgical Pvt. Ltd. vs. ACIT order dated 17.02.2021.**

However, on the other hand, ld. DR for the Revenue contended that it is a case of furnishing of inaccurate particulars of income and has relied upon the order passed by the AO as well as CIT (A).

9. Undisputedly, assessments in all the appeals except the appeal bearing ITA No.5109/Del/2017 for AY 2012-13 were framed u/s 153A of the Act pursuant to the search and seizure operation carried out u/s 132 (4) of the Act in Rockland Group of cases. It is also not in dispute that assessee company has initially filed application for settlement before Income Tax Settlement Commission which was rejected and the only addition made in AYs 2010-11, 2011-12 & 2011-12 was for Rs.1,00,000/- each on account of disclosure made before Income Tax Settlement Commission.

10. In order to proceed further, we would like to peruse the identical worded notices issued by AO u/s 274 read with section 271(1)(c) of the Act to initiate the penalty proceedings, available at pages 11 to 15 of the paper book for AYs 2008-09 to 2012-13, and notice issued for AY 2008-09 is extracted for ready perusal as under :-

**“NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(c) OF THE INCOME TAX ACT, 1961.**

**Date: 20.06.2014**

**To**

**M.S. HITESH CONSTRUCTION PVT.  
 c-30, PANCHSHEEL ENCLAVE,  
 NEW DELHI-17.**

**Whereas in the course of proceedings before me for the Assessment Year 2008-09 it appears to me that you:-**

- ~~Have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income Tax Act, 1922 or 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**

**You are hereby requested to appear before me at Room No.364, 3<sup>rd</sup> Floor, ARA Centre, Jhandewalan Extention, New Delhi at 11.00 AM/PM on 23.07.2014 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 person, 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(1)(c).**

**Sd/-  
 DCIT, CC-11, New Delhi.**

11. Bare perusal of the notices 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.

12. 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]”*

13. 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 of 2016 by order dated 5th August, 2016.”*

14. 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), 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 penalty proceedings initiated u/s 271(1)(c) are not sustainable.

15. Even the AO has failed to apply his mind at the time of recording satisfaction at the time of framing assessment to initiate the penalty proceedings u/s 271(1)(c) of the Act as to under which limb of section 271(1)(c) i.e. for concealing particulars of income or furnishing inaccurate particulars of such income, penalty proceedings have been sought to be initiated rather written vague and ambiguous satisfaction by recording that, “penalty proceedings

u/s 271(1)(c) are initiated”. So, initiating penalty proceedings on the basis of vague and ambiguous satisfaction rather “no satisfaction” are bad in law and as such not sustainable.

16. Identical issue as to levy the penalty on the basis of identical additions has already been decided by the **coordinate Bench of the Tribunal in case of Radhika Surgical Pvt. Ltd.** (supra) in favour of the assessee’s group company which was also searched during the search and seizure operation conducted on 06.09.2011 by returning following findings :-

*“8. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to levy of penalty under section 271(1)(c) of the Act. We find that the identical issue arose in the case of the assessee in A.Y. 2008-09 and the Co-ordinate Bench of Tribunal in ITA No. 5088/Del/2017 for A.Y. 2008-09 vide order dated 21.01.2021 has deleted the penalty by observing as under:*

*“3. Search and seizure action u/s 132(4) of the Income Tax Act, 1961 (hereafter referred to as the “the Act”) was carried out in the Rockland group of cases on 06.09.2011. Subsequent to the search and seizure action, assessment proceedings were carried out u/s 153C r.w.s. 143(3), by issue of notice dated 05.08.2013 to the appellant to file the return of income. In response, the assessee filed return of income on 10.09.2013, disclosing the total income as NIL. Subsequently, the assessee filed an application for settlement u/s 245C of the Act before the Income Tax Settlement Commission in the capacity of a “related” person, related to the other assessee’s of the Rockland group who had also filed settlement applications as “specified person” u/s 245C(i) proviso (i). However, the assessee's application was rejected by the Income Tax Settlement Commission vide their order dated 23.04.2013, wherein the Commission held that the assessee does not qualify for admission as a person*

*“related to” to the “specified person”. The assessee filed a writ petition before the Hon’ble Delhi High Court, challenging the rejection order of the Settlement Commission, but the petition was dismissed by the Hon’ble Delhi High Court on 20.10.2015. Meanwhile, the Assessing Officer passed the assessment order making the following additions over and above the income returned by the assessee:*

<i>A.Y.</i>	<i>Head of addition</i>	<i>Amount (IN Rs.)</i>
<i>2008-09</i>	<i>(i) Disclosure in settlement application</i>	<i>30,00,000/-</i>
	<i>(ii) Unexplained cash credits</i>	<i>1,79,56,880/-</i>
	<i>(iii) Commission paid to secure unexplained cash credits</i>	<i>5,38,706/-</i>

*The assessee filed appeal against all the above heads of additions. In the appeal against the quantum additions, the following amounts were confirmed in first appeal.*

<i>A.Y.</i>	<i>Head of addition</i>	<i>Amount (IN Rs.)</i>
<i>2008-09</i>	<i>(i) Disclosure in settlement application</i>	<i>30,00,000/-</i>
	<i>(ii) Unexplained cash credits</i>	<i>2,26,000/-</i>
	<i>(iii) Commission paid to secure unexplained cash credits</i>	<i>1,79,569/-</i>

*After giving effect to the order of CIT(A), the Assessing Officer after providing the assessee an opportunity to show cause as to why penalty u/s 271(1)(c) should not be levied for concealment of income, and considering the same, rejected the submissions of the assessee and proceeded to levy penalty at the rate of 100% of the tax sought to be evaded on the amounts confirmed in first appeal.*

.....

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 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 nonstriking 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.”*

*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.*

*9. Before us, no distinguishing feature in the facts of the case in the year under consideration and that of earlier year has been pointed out by the Revenue. Further it has also not brought on record any material to show that the decision of the Co-ordinate bench of the Tribunal in assessee's own case for A.Y. 2008-09 has been set aside/ stayed or over ruled by the higher judicial forum. Considering the totality of the aforesaid facts and following the decision of the Co-ordinate bench in the assessee's own case for 2008-09 and for similar reasons, we are of the view that the levy of penalty u/s 271(1)(c) was not justified. We therefore direct its deletion. Thus the grounds of the assessee are allowed.”*

17. In view of what has been discussed above, we are of the considered view that all the present appeals are covered by the order passed by the coordinate Bench of the Tribunal in assessee's group company cases and no distinguishing facts, if any, have been brought on record nor it is the case of the Revenue if the order passed by the coordinate Bench of the Tribunal has been stayed by any higher forum.

18. Consequently, following the order passed by the coordinate Bench of the Tribunal in case of **Radhika Surgical Pvt. Ltd.** (supra) and decisions rendered by Hon'ble Supreme Court in case of *CIT vs. SSA's Emerala Meadows* (supra) & Hon'ble Delhi High Court in case of *Pr. CIT vs. Sahara India Life Insurance Company Ltd.* (supra), penalty levied by the AO and sustained by the Id. CIT (A) in all the aforesaid appeals is not sustainable in the eyes of law, hence ordered to be deleted. Resultantly, all the appeals filed by the assessee are allowed.

**Order pronounced in open court on this 25<sup>th</sup> day of August, 2021.**

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

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

**Dated the 25<sup>th</sup> day of August, 2021  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-24 New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**