

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA Nos. 6946/DEL/2017 [A.Y 2006-07]
ITA Nos. 6947/DEL/2017 [A.Y 2008-09]**

Shri Sunit Shah
Prop. Shah Namkeen
188, Gopal Park
Chander Nagar, New Delhi

Vs.

The I.T.O
Ward 36(2)
New Delhi

PAN : AANPS 7190 J

[Appellant]

[Respondent]

**Date of Hearing : 31.08.2021
Date of Pronouncement : 31.08.2021**

Assessee by : Shri Narender Chillar, Adv.

Revenue by : Shri Prakash Dubey, CIT- DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above two appeals by the assessee are preferred against two separate orders of the Commissioner of Income Tax [Appeals] - 19, New Delhi dated 29.08.2017 and 15.09.2017 pertaining to Assessment Years 2006-07 and 2008-09 respectively.

2. Since both the appeals were heard together, these are being disposed of by this common order for the sake of convenience and brevity.

3. The solitary grievance of the assessee in both the appeals is that the ld. CIT(A) erred in confirming the penalty of Rs. 1,02,485/- in A.Y 2006-07 and Rs. 24,49,100/- in A.Y 2008-09 u/s 271(1)(c) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short].

3. At the very outset, the ld. counsel for the assessee drew our attention to the notices dated 31.12.2008 for A.Y 2006-07 and 29.03.2016 for A.Y 2008-09 and pointed out that the notices are vague and are not decisive in respect of the charge levelled against the assessee - whether the penalty is being levied for furnishing inaccurate particulars of income or for concealment of income.

4. Representatives of both the sides were heard at length. Case records carefully perused.

5. We find that the AO initiated penalty proceedings by issuing and serving notice u/s 274 r.w.s 271 of the Act dated 31.12.2008 for A.Y 2006-07, which reads as under:

"Notice Under Section 274 Read With Section 271 of the Income
Tax Act-196

The ITO
New Delhi

To

Dated 31.12.2008

Shri Sunit Shah Prop
M/s Shah Namkeen, 188
Gopal Park, Chander Nagar
Delhi

Whereas in the course of proceedings before me for the
assessment year 2006-07 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 11.30 on
28.04.2016 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 authorised representative 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.*

Assessing Officer

Income tax Officer
Ward 38(2), Vikas Bhavan
New Delhi

6. In A.Y 2008-09, the Assessing Officer issued notice u/s 274 r.w.s 2 of the Act dated 29.03.2016 as under:

Notice Under Section 274 Read With Section 271 of the Income
Tax Act-196

O/o The ITO
Ward 59(5)
Vikas Bhawan
New Delhi

To

Dated 29.03.2016

Shri Sunit Shah Prop
M/s Shah Namkeen, 188
Gopal Park, Chander Nagar
Delhi

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 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 11.30 on 28.04.2016 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 authorised representative 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.

Assessing Officer

Ward 59(5), Vikas Bhavan
New Delhi

7. A bare perusal of the aforementioned notices show that the Assessing Officer himself was not aware/certain as to whether he is issuing notice to initiate penalty proceedings either for concealment of income or for furnishing inaccurate particulars of income.

8. In our considered opinion, the extracted notices are vague and ambiguous, as the charge framed by the Assessing Officer is not clear and it is not possible for the person to explain the charge whether it is for concealment of particulars of income or for filing inaccurate particulars of income.

9. The 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 the ground of unspecified notice has held as under:-

"Section 274, read with section 271(l)(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 X Ginning Factory* [2013] 359 1TR 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.

10. 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 Sec. 271(1)(c) of the Act, which was accepted by the IT AT. 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 -73 Taxmann.com 241 (Kar)*, the appeal against which was dismissed by the Supreme Court of India in SLP No. 11485 by order dated 5th August 2016.

11. Following the decisions rendered in the cases of *CIT vs. Manjunatha Factory*, *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 notices issued by the AO are 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.

12. In view of what has been discussed above, following the decisions rendered by Hon'ble High Courts discussed in the preceding paras and without entering into the other aspects of the case, we are of the considered view that when the very initiation of the penalty by way of issuance of vague and ambiguous notices u/s 271(1)(c) read with section 274 of the Act without specifically charging the assessee if he has concealed the particulars of income

or has furnished inaccurate particulars of such income, subsequent penalty proceedings are not sustainable, hence penalty levied by the AO and confirmed by the Id. CIT (A) is not sustainable and as such, the appeals filed by the assessee are allowed.

13. Respectfully following the decisions [supra] we direct the Assessing Officer to delete the penalty u/s 271(1)(c) of the Act amounting to Rs. 1,02,485/- in A.Y 2006-07 and Rs. 24,49,100/- in A.Y 2008-09.

14. In the result, both the appeals filed by the assessee in ITA No. 6946 & 6947/DEL/2017 are allowed.

The order is pronounced in the open court on 31.08.2021 in the presence of both the rival representatives.

Sd/-

[KULDIP SINGH]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 31st August, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	