

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

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

ITA No. 5110/DEL/2017 [A.Y 2009-10]
ITA No. 5111/DEL/2017 [A.Y 2010-11]
ITA No. 5112/DEL/2017 [A.Y 2011-12]
ITA No. 5113/DEL/2017 [A.Y 2012-13]

Himanshu Medicare Pvt Ltd.
C - 30, Panchsheel Enclave
New Delhi

Vs.

The A.C.I.T.
Central Circle - 6
New Delhi

PAN : AACCH 0983 J

[Appellant]

[Respondent]

Date of Hearing : 02.09.2021
Date of Pronouncement : 02.09.2021

Assessee by : Shri P.C. Yadav, Adv

Revenue by : Shri Rajesh Kumar, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above four separate appeals by the assessee are preferred against four separate orders of the Commissioner of Income Tax [Appeals] - 24, New Delhi dated 29.06.2017 pertaining to Assessment Years 2009-10 to 2012-13.

2. Since common grievance is involved in all the above captioned four appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance in all these appeals relates to the levy of penalty u/s 271(1)(c) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short], though the quantum of penalty differs in the captioned appeals.

4. In the captioned appeals, the assessee has raised an additional ground which reads as under:

“On the facts and in the circumstances of the case, the penalty levied u/s 271(1)(c) of the Act is void as the notice u/s 271(1)(c) is bad and defective as it is issued without deleting the appropriate clause under which the penalty proposed to be imposed either for filing of inaccurate particulars of income or for concealment of particulars of income, and as such, the notice is not sustainable and not curable.”

5. The ld. DR strongly objected to the admission of the additional ground. It is the say of the ld. DR that the penalty has been levied for earning commission in providing accommodation entries and the ld.

CIT(A) confirmed the penalty holding that the assessee has concealed the income being engaged in clandestine activities .

6. Per contra, the ld. counsel for the assessee stated that the ld. CIT(A) has considered this issue while dismissing the appeal of the assessee. The ld. counsel for the assessee pointed out to the relevant paras from the order of the ld. CIT(A) and stated that the ld. CIT(A) has, in fact, considered this issue at para 4.2.9 of his order.

7. We have given thoughtful consideration to the submissions made by the ld. DR. We have carefully perused the order of the ld. CIT(A). We find that the ld. CIT(A) at Para 4.2.9 of his order has considered the decision of the Hon'ble Supreme Court in the case of SSA's Emerald Meadows - (2016) 73 Taxmann.com 248 (SC) and decision of the Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar), We, therefore, do not find any substance in the submissions made by the ld. DR.

8. We will now proceed to address the additional ground raised by the assessee.

9. The relevant notice for Assessment Year 2010-11, which is similar in all the other Assessment Years, reads as under:

"NOTICE UNDER SECTION 274

READ WITH SECTION 271(1)(c) OF THE INCOME TAX ACT, 1961

Dated: 20/06/2014i

To,

M/S HIMANSHU MEDICARE PVT.
C-30, PANCHSHEEL ENCLAVE, NEW DELHI -17

Whereas in the course of proceedings before me for the Assessment Year 2010-11, it appears to me that you

* 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. 364,3rd Floor, ARA Centre, Jhandewalnn Extention, New Delhi at 11 A.M. /P.M. On 23/07/2014 and show cause why an order imposing a penalty on you should not be made u/s 271 of the Income-^ax Act: 1961. If you do hot with to avail yourself of this opportunity, or being heard in person or through authorised person, you may show cause in writing on or before the said date which will be considered before any/search order is made u/s 271(1)(c).

D.C.I.T. C.C.-11, New Delhi
Dy. CIT
Central Circle 11,
New Delhi - 55

10. 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.

11. 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.

12. 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.

13. Hon'ble Delhi High Court in case of Pr. CIT vs. Sahara India Life Insurance Company Ltd. ITA No. 475/2019 order dated 02.08.2019 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.

14. 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.

15. On identical set of facts, this Tribunal in the case of Hitesh Construction Pvt Ltd in ITA Nos. 5105 to 5109/DEL/2017 order dated 25.08.2021 has considered a similar grievance and has allowed the appeal after drawing support from the decision of the Hon'ble Delhi High Court in the case of Sahara India Life Insurance Company Ltd [supra] and SSA Emerald Meadows [supra].

16. 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.

17. Respectfully following the decisions [supra] we direct the Assessing Officer to delete the penalty levied u/s 271(1)(c) of the Act in all the A.Ys under consideration.

18. In the result, all the four appeals filed by the assessee in ITA Nos. 5110 to 5113/DEL/2017 are allowed.

The order is pronounced in the open court on 02.09.2021 in the presence of both the rival representatives.

Sd/-

**[KULDIP SINGH]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 02nd September, 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	
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