

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 3005/Del/2016
(Assessment Year: 2008-09)

M/s. Central Hospital and Research Centre, Plot No. 69, Sector-20A, Faridabad PAN: AAFC7937Q	Vs.	DCIT, Circle-1, Faridabad
(Appellant)		(Respondent)

Assessee by :	Shri Somil Agarwal, Adv Shri Deepesh Garg, Adv
Revenue by:	Smt Kirti Sankratyayan, Sr. DR
Date of Hearing	06/09/2021
Date of pronouncement	06/09/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order passed by the Id CIT(A), Faridabad dated 02.12.2015, for Assessment Year 2008-09 wherein, the penalty levied by the Id AO u/s 271(1)(c) of the Act of Rs. 4,37,215/- is confirmed.
2. The brief facts of the case shows that the assessee is a company engaged in the business of medical services. It filed its return of income on 08.08.2008 declaring loss of Rs. 4,38,06,887/-. The assessment order u/s 143(3) of the Act was passed on 29.12.20000 reducing the loss to the tune of Rs. 3,53,46,026/-. Subsequently, proceedings u/s 147 of the Act was initiated issuing the notice u/s 148 of the Act on 24.12.2012. The assessment u/s 143(3) read with section 147 was passed. The matter travelled to the coordinate bench and vide order dated 31.07.2013, it was set aside to the file of Id AO. Subsequently, the set aside order in pursuance to the order of the coordinate bench was passed where the total loss was assessed at Rs. 4,24,12,179/-. The addition was with

- respect to bad debts written off of Rs. 8,86,305/-, provision of Rs. 4 lakhs for water charges, claim of deduction of interest on TDS of Rs. 1,04,495/.
3. The Id AO initiated penalty proceedings by recording the satisfaction of the disallowance of bad debts and provision of water charges stating that assessee has 'concealed the income as well as furnished inaccurate particulars of income'. The notice u/s 274 was issued on 31.03.2014 levying the charge that the assessee has 'concealed the particulars of income or furnished inaccurate particulars of such income'.
 4. The Id AO passed an order u/s 271(1)(c) of the Act dated 30.07.2014 holding in para No. 4 that the assessee has 'concealed income or furnished inaccurate particulars of income'. Thus, a penalty of Rs. 4,37,215/- was levied.
 5. Assessee contested the same before the Id CIT(A) unsuccessfully and therefore, has preferred the appeal before us.
 6. The Id AR challenged the penalty order in the first ground that it is bad in law for the reason that the Id AO has not struck off any of the twin charges in the penalty notice. Further, the order of the Id AO also does not show specific charges. He therefore, submitted that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Delhi High Court in case of Sahara India Financial Services as well as the order of the Hon'ble Karnataka High Court in case of CIT v. SSA's Emerald Meadows.
 7. The Id DR vehemently contested the arguments of the Id AR and stated that such argument was taken before the lower authorities.
 8. We have carefully considered rival contentions and perused the orders of the lower authorities. We have also considered the notice of penalty issued by the Id AO u/s 274 of the Act. On perusal of the notice it is apparent that none of the twin limbs are struck off by the Id AO. The Hon'ble Delhi High Court in para 21 in Sahara India Life Insurance Company Ltd in ITA No. 475/2019 dated 02.08.2019 relying on the decision of the Hon'ble Karnataka High Court in 359 ITR 565 and in 73 Taxmann.com 241 has held the notice issued by the Id AO would be bad in law if it did not specify which limbs u/s 271(1)(c) of the Act penalty

proceedings do not initiated i.e. whether for 'concealment of particulars of income or for furnishing of inaccurate particulars of income.' Even in this case the charge on the assessee is not discernable from the order of the assessment and further the penalty order also shows that penalty is levied on both the charges. The Id DR could not show us any reason that in case of the assessee penalty could be levied for both charges simultaneously. In view of this, we reverse the order of the lower authorities and direct the Id AO to delete the penalty u/s 271(1)(c) of the Act.

9. In the result, we quash the penalty order passed and allow the appeal of the assessee.

Order pronounced in the open court on 06/09/2021.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 06/09/2021
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi