

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 4899/DEL/2017 (A.Y 2007-08)

&

I.T.A. No. 4898/DEL/2017 (A.Y 2005-06)

(THROUGH VIDEO CONFERENCING)

Chetan Gupta 16, Kasturba Gndhi Marg, New Delhi AATPG9580E (APPELLANT)	Vs	ACIT Central Circle-7 New Delhi (RESPONDENT)
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Appellant by	Sh. Ashwani Kumar, CA, Sh. Rahul Chaurasia, CA & Sh. Bhavesh Jindal, CA
Respondent by	Sh. Mahinder Kaur, Sr. DR

Date of Hearing	07.09.2021
Date of Pronouncement	07.09.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the orders dated 21/06/2017 passed by CIT(A)-24, New Delhi for assessment year 2007-08 & 2005-06 respectively.

2. *The grounds of appeal are as under:-*

I.T.A. No. 4898/DEL/2017 (A.Y 2005-06)

“That the order dated 21-06-2017 passed u/s 250 of the Income-tax Act, 1961 by the Commissioner of Income-tax (Appeals)-24, New Delhi is against law and facts on the file in as much as he was not justified to uphold the

action of the Ld Assessing Officer in levying penalty u/s 271(1)(c) of the Income-tax Act, 1961 of Rs. 1,66,16,677/- for alleged concealment/furnishing inaccurate particulars of income, without considering the facts and circumstances of the case and the legal position in much as no such penalty is exigible in the facts & circumstances of the case.”

I.T.A. No. 4899/DEL/2017 (A.Y 2007-08)

“That the order dated 21-06-2017 passed u/s 250 of the Income-tax Act, 1961 by the Commissioner of Income-tax (Appeals)-24, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Ld Assessing Officer in levying penalty u/s 271(1)(c) of the Income-tax Act, 1961 of Rs. 1,40,16,291/- for alleged concealment/furnishing inaccurate particulars of income, without considering the facts and circumstances of the case and the legal position in much as no such penalty is exigible in the facts & circumstances of the case.”

3. Both the appeals are identical, hence we are taking up the appeal for A.Y. 2005-06. The assessment was completed u/s 147 read with Section 143 (3) of the Income Tax Act vide order dated 11/3/2013 at total income of Rs.43,71,04,170/- against the return income amounting to Rs.3,41,612/-. After making addition of Rs.43,67,62,555/- on account of unexplained credit entries u/s 68 of the Act. The penalty u/s 271(1)(c) was initiated in the assessment order and accordingly a show cause notice u/s 271(1)(c) of the Act was issued to the assessee on 16/2/2017 for submitting explanation on the concealment. The assessee filed reply on 27/02/2107 to the said penalty order. The Assessing Officer passed penalty u/s 271(1)(c) read with Section 274 of Income Tax Act, 1961, thereby imposing penalty of Rs. 1,66,16,677/-.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the notice dated 16.02.2017 has not given a specific charge for penalty. The Ld. AR submitted that the CIT(A) erred in confirming the penalty u/s 271(1)(c) of the Act as under which limb of Section 271(1)(c), the penalty is levied was not mentioned in the notice issued under Section 271(1)(c) read with Section 274 of the Act. The Ld. AR submitted that whether the penalty is for concealment of income or furnishing of inaccurate particulars of income was not evident from the notice nor from the penalty order as well. The Ld. AR further submitted that the penalty provision being quasi judicial, unless there is specific charge there cannot be levy of penalty. Therefore, the order levying penalty is wrong and bad in law. The Ld. AR relied upon the decision of the Hon'ble Supreme Court in case of CIT vs. SSA's Emerald Meadows (2016) 73 Taxman.com 248 (SC) and CIT v. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Kar). The Ld AR further submitted that the Hon'ble Delhi High Court in case of Pr. CIT Vs. M/s. Sahara India Life Insurance Company Ltd. (ITA No.475/2019 vide order dated 02.08.2019) held that notice issued by the Assessing Officer would be bad in law if it did not specify which limb of Section 271(1)(c) of the penalty proceedings had been initiated.

6. The Ld. DR submitted that the penalty order is very clear that the penalty is imposed on concealment of income and, therefore, merely not mentioning the specific limb of Section 271(1)(c) will not make the penalty order bad in law. The Ld. DR relied upon the Assessment Order, Penalty order and the order of the CIT(A).

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 16.02.2017 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. 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 non-striking 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. Though the CIT(A) has emphasized in the order that the penalty was levied on

the basis of the concealment of income, but after perusal of the assessment order , it can be seen that the proceedings u/s 271(1)(c) has not been initiated on any specific limb. In fact, there is no satisfaction recorded for the imposition of penalty u/s 271(1)(c) of the Income Tax Act. The penalty order though stated that it is based on concealment of income but the Assessing Officer has not given any proper findings as to how the concealment is done. The CIT(A) has overlooked the decisions of the Hon'ble Apex Court MAK Data (P.) Ltd. (Supra) and the Hon'ble Delhi High Court in case of Reliance Petroproducts Ltd. (Supra). Thus, in light of the decisions relied upon by the Ld. AR in case of M/s. Sahara India Life Insurance Company Ltd. (supra) and Mak Data P. Ltd. (supra), the penalty order is not proper and just. We, therefore, set-aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied. Thus, appeal being ITA No. 4898/Del/2017 filed by the assessee is allowed.

8. As regards to appeal being ITA No. 4899/Del/2017 filed by the assessee, the facts are identical to that of ITA No. 4898/Del/2017 and no distinguishing facts were pointed out by the Ld. DR during the course of hearing. Hence, appeal being ITA No. 4899/Del/2017 is allowed.

9. In result, both the appeals of the assessee are allowed.

Order pronounced in the Open Court on this 07th Day of September, 2021

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated : 07/09/2021

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI