

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A. No.7086/DEL/2017 (A.Y 2013-14)**

**(THROUGH VIDEO CONFERENCING)**

Instyle Exports Pvt. Ltd. D-6/8, Okhla Industrial Area, Phase-II, New Delhi AAACI0898K <b>(APPELLANT)</b>	Vs	ACIT Circle-12(2) New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. V. K. Jain, CA</b>
<b>Respondent by</b>	<b>Ms. Anima Barnwal, Sr. DR</b>

<b>Date of Hearing</b>	<b>14.09.2021</b>
<b>Date of Pronouncement</b>	<b>28.09.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 30/08/2017 passed by CIT(A)-22, New Delhi for assessment year 2013-14.

2. The grounds of appeal are as under:

*“1. The order passed by the Ld. CIT (A) against penalty order is bad in law, wrong on facts and against the principles of natural justice.*

*2. That on the facts and in the circumstances of the case Ld. CIT(A) has erred in confirming penalty of Rs. 4,50,530/- u/s 271(1)(c) of the Income Tax Act, 1961, merely on disallowance of depreciation of Rs. 13,88,600/- without considering the facts that the appellant company has not concealed the income or furnished inaccurate particulars of Income*

*3. That on the facts the Ld. CIT(A) has failed to appreciate that all relevant*

*facts and figures were duly disclosed in the Income Tax Return and in the books of accounts and the same was produced at the time of assessment proceedings and therefore the question of furnishing inaccurate particulars of income or concealment of income with the intention of suppressing the taxable income does not arise.*

4. *The Ld CIT(A) has failed to appreciate that the Tax Audit Report duly furnished does not mention any disallowance required out of depreciation on part of building given on rent and the mistake was only a bonafide mistake.”*

3. The assessee company is engaged in the business of manufacturing and exports of readymade garments, job work and trading in fabric etc. The return of Income was filed on 30/09/2013 at the income of Rs. 92,01,530/-. The Assessing Officer passed assessment order u/s 143(3) dated 23/03/2016 and assessed total income at Rs. 1,05,90,130/- by making disallowance of depreciation amounting to Rs. 13,88,600/-. Subsequent to the passing of the order u/s 143(3) dated 23/03/2016, the Assessing Officer has initiated penalty proceedings and passed the penalty order u/s 271(1)(c) dated 29.09.2016 and imposed penalty amounting to Rs. 4,50,530.

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 penalty of Rs. 4,50,531/- was imposed u/s 271(1)(c) of the Income Tax Act, 1961 merely on disallowance of depreciation of Rs. 13,88,600/- without considering the fact that the assessee company has not concealed the income or furnished inaccurate particulars of such income. The Ld. AR submitted that the notice dated 23.03.2016 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. The Ld. AR further submitted that the wrong claim of depreciation cannot be held to have been claimed with an intention to suppress the facts or evade tax as the books of accounts of the assessee company was audited u/s 44AB of the Act. In fact, the tax auditor of the assessee company has not made any adverse remarks in respect of claim of depreciation including the claim of Rs. 13,88,600/- on rented property on which the assessee claimed standard deduction u/s 24(b) of the Act. It's a bonafide mistake and hence no appeal was filed against the said disallowance by the assessee.

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 23.03.2016 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 wrong claim of depreciation which was a bonafide mistake on part of the assessee for which it cannot be said that it is concealment of income or furnishing of inaccurate particular of income. 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 5<sup>th</sup> 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.

8. In result, the appeal of the assessee is allowed.

**Order pronounced in the Open Court on this 28th Day of September ,  
2021**

**Sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 28 /09/2021

*R. Naheed \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI