

**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. 2558/DEL/2018 (A.Y 2013-14)

(THROUGH VIDEO CONFERENCING)

Keystone Developers Pvt. Ltd. B-29, Sheikh Sarai, Phase-1, New Delhi AACCK1431C (APPELLANT)	Vs	Addl. CIT, Special Range-5, New Delhi (RESPONDENT)
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Appellant by	Sh. Pradeep Batra, CA
Respondent by	Sh. Vivek Vardhan, Sr. DR

Date of Hearing	07.10.2021
Date of Pronouncement	14.10.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 02/01/2018 passed by CIT(A), Ghaziabad for assessment year 2013-14.

2. The grounds of appeal are as under:-

“1. The Ld.CIT(A) -36, has erred in law and facts by confirming the levy of penalty of Rs.1,48,782/- imposed u/s 271(1)(c) of the Act by the Assessing Officer .

The action of the Ld.CIT(A)-36 is arbitrary, unjustified and against the provisions of the law.”

3. The assessee is engaged in business of construction activities. The return declaring total income of Rs. 3,28,88,242/- was filed on 25/09/2013. The

Assessing Officer assessed the income at Rs. 3,34,66,490/- after making the following additions:- (i) Disallowance amounting to Rs 42,484/- out of vehicle running & maintenance Travelling and conveyance and Diwali Expenses (ii) Disallowance amounting to Rs 40,400/- under section 14A read Rule 8D (iii) Addition amounting to Rs. 4,95,941/- on account of interest u/s 244A not shown in ITR, due to an inadvertent mistake. The Assessing Officer has imposed penalty of Rs. 1,48,782/- i.e. @ 100% of the tax on the above addition relating to interest u/s 244A not reflected in ITR u/s 27(1)(c) of the Act.

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 notice u/s 274 has not given any limb under which the penalty u/s 271(1)(c) has been imposed. Thus, the penalty order itself is 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 under which limb of Section 271(1)(c) the penalty proceedings had been initiated. Besides that the Ld AR submitted that on merit penalty has been imposed due to impugned addition relating to interest u/s 244A not reflected in ITR on account of bonafide clerical human error. The assessee has not shown the same which was only due to bonafide inadvertent human error while preparing data of ITR/ Tax Audit. The Ld AR relied upon the decision of the Hon'ble Supreme Court in case of Price Waterhouse Coopers (P.) Ltd. vs. CIT, Kolkata 348 ITR 306 (SC). The Ld. AR relied upon the decision of the Hon'ble Apex Court in case of CIT vs. Reliance Petroproducts Private Limited (2011) 11 SCC 762: 322 ITR 158

wherein it is held that submitting incorrect claim in law does not tantamount to furnishing inaccurate particulars of income of assessee or concealment.

6. The Ld DR relied upon the assessment order, penalty order and order of the CIT(A).

7. We have heard both the parties and perused all the relevant materials available on record. The penalty notice u/s 274 r.w.s 271(1)(c) dated 29.03.2016 along with assessment order has not mentioned the specific limb of Section 271(1)(c) as to whether the assessee furnished inaccurate particulars of income or concealed the income. Since in the instant case 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. Thus, the penalty order itself is void ab initio. Besides that as held in the cases of Price Waterhouse Coopers (P.) Ltd. (supra) and Reliance Petroproducts (supra) submitting incorrect claim in law does not tantamount to furnishing inaccurate particulars of income of assessee or concealment. Thus, the penalty order does not survive on merit as well. Hence, appeal of the assessee is allowed.

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

Order pronounced in the Open Court on this 14th Day of October, 2021

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 14/10/2021

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI