

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA NO.7528/DEL/2017
(ASSESSMENT Year 2012-13)**

Shri Alok Garg,
C/o M/s. RRA TAXINDIA,
D – 28, South Extension Part I,
New Delhi – 110 049.

vs. DCIT, Circle 1,
Ghaziabad.

(PAN : AARPG7151K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.K. Gupta, Advocate
REVENUE BY : Ms. Kirti Sankartyan, Senior DR

Date of Hearing : 18.11.2021

Date of Order : 25.11.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Shri Alok Garg (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 14.09.2017 passed by the Commissioner of Income-tax (Appeals), Ghaziabad affirming the penalty order dated 28.02.2017 passed u/s 271(1)(c) of the Income-tax Act, 1961 (for

short 'the Act') qua the assessment year 2012-13 on the grounds inter alia that :-

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in imposing penalty u/s 271(1)(c) of Rs.13,88,112/- and that too without assuming jurisdiction as per law and the impugned penalty order being illegal and void ab-initio and without considering the submissions of assessee and without observing the principles of natural justice.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in imposing penalty u/s 271 (1)(c), is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in imposing penalty u/s 271(1)(c) or Rs.13,88,112/- and that too without recording mandatory "satisfaction" as per law.

4. That having regard to the facts and circumstances of the case, Ld, CIT(A) has erred in law and on facts in not quashing the impugned penalty order on the ground that Ld. AO failed to appreciate that penalty notice dated 05.02.2015 did not specify whether penalty is being initiated or concealment of income or for furnishing inaccurate particulars of income.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned penalty order which was barred by limitation.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment order framed under section 143(3) of the Act at an income of Rs.62,55,632/- by making addition on the basis of estimation of net profit @ 8% of the contract receipt, penalty proceedings were initiated u/s

271(1)(c) of the Act. Declining the contentions raised by the assessee, AO proceeded to levy the penalty at Rs.13,88,112/- @100% of tax sought to be evaded.

3. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has confirmed the penalty by dismissing the appeal. Feeling aggrieved by the order passed by the Id. CIT (A), the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, the entire addition has been made by the AO/confirmed by the Id. CIT (A) on the basis of estimated net profit @ 8% of the turnover by following his own order for Assessment Year 2010-11 which has since been set aside and net profit has been estimated @ 3% of the turnover. It is also not in dispute that following the order passed by the **coordinate Bench of the Tribunal in assessee's own case for AY 2010-11 order dated 21.04.2017**, this Bench has also accepted net profit rate @ 3%.

6. In the backdrop of the aforesaid facts and circumstances of the case, order passed by the lower authorities and arguments

addressed by the authorized representatives of both the parties, the sole question arises for determination in this case is:-

“as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income during assessment proceedings?”

7. Ld. AR for the assessee contended that in order to initiate the penalty proceedings, the AO has failed to specify in the show-cause notice issued u/s 271(1)(c)/274 of the Act if the assessee has concealed the particulars of income or has furnished inaccurate particulars of income and relied upon the decisions of *CIT vs. SSA’s Emerala Meadows -73 taxmann.com 241 (Kar.) (Revenue’s SLP dismissed in 242 taxman 180)* and *Hon’ble High Court of Delhi in Pr. CIT vs. Sahara India Life Insurance Company Ltd. in ITA 475/2019 order dated 02.08.2019*. Ld. AR for the assessee also contended that no valid satisfaction has been recorded by the AO during the assessment proceedings as to under which limb of section 271(1)(c) i.e. ‘concealment of particulars of income’ or ‘furnishing of inaccurate particulars of income’, penalty proceedings have been initiated.

8. In order to proceed further, we would like to peruse the notice issued by AO u/s 274 read with section 271(1)(c) of the Act to initiate the penalty proceedings which is extracted as under for ready perusal:-

“F.NO.271(1)(c)/DCIT/Circle-1/GZB/2014-15/2253 Dt.05.02.2015

***NOTICE UNDER SECTION 274 WITH SECTION 271
OF THE INCOME TAX ACT, 1961.***

To

*Shri Alok Garg,
Prop. Alok Builders,
R-11/125, Raj Nagar,
Ghaziabad.*

*Whereas during the course of proceedings before me for
the assessment year 2012-13 it appears to me that you:-*

- ~~Have without reasonable cause failed to furnish return of income which you were required to furnish by a notice given under section 139(1) or by a notice given u/s 139(2)/148/142(1) of the Income Tax Act, 1961 dated..... or have without reasonable cause failed to furnish within the time allowed and in the manner required by the said section 139(1) or by such notice.~~*
- ~~Have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income tax Act, 1961 No..... dated.....~~*
- Have concealed the particulars of your income or have furnished inaccurate particulars of such income.*

You are hereby requested to appear before me on 18.02.2015 at 12.00 Noon and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representatives you may show cause in writing on or before the said date which will be considered before any such order is made under section 271(1)(c).

*Sd/-
(Yashvendra Singh)
Dy.Commissioner of Income Tax, Circle 1,
Ghaziabad.”*

9. Bare perusal of the notice issued u/s 274 read with section 271(1)(c) of the Act, extracted above, in order to initiate the penalty proceedings against the assessee goes to prove that the AO himself was not aware / sure as to whether he is issuing notice to initiate the

penalty proceedings either for “concealment of particulars of income” or “furnishing of inaccurate particulars of such income” by the assessee rather issued vague and ambiguous notice by incorporating both the limbs of section 271(1)(c). When the charge is to be framed against any person so as to move the penal provisions against him/her, he/she is required to be specifically made aware of the charges to be leveled against him/her.

10. Hon’ble Apex Court in case of *CIT vs. SSA’s Emerala 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 ground of unspecified notice has held as under:-

“Section 274, read with section 271(1)(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 & 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]”

11. Hon’ble Delhi High Court in case of *Pr. CIT vs. Sahara India Life Insurance Company Ltd.* (supra) while deciding the identical issue 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.”

12. Following the decisions rendered in the cases of *CIT vs. Manjunatha Cotton and Ginning Factory*, *CIT vs. SSA's Emerala Meadows and Pr. CIT vs. Sahara India Life Insurance Company Ltd.* (supra), we are of the considered view that when the notice issued by the AO is 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.

13. Even the AO has failed to apply his mind at the time of recording satisfaction at the time of framing assessment to initiate the penalty proceedings u/s 271(1)(c) of the Act as to under which limb of section 271(1)(c) i.e. for concealing particulars of income or furnishing inaccurate particulars of such income, penalty proceedings have been initiated rather written vague and ambiguous satisfaction recorded that, “penalty proceedings u/s 271(1)(c) are initiated”. So, initiating penalty proceedings on the basis of vague and ambiguous satisfaction rather “no satisfaction” are bad in law and as such not sustainable.

14. Even otherwise, in identical facts and circumstances of the case, **coordinate Bench of the Tribunal in AY 2010-11** (supra) deleted the penalty u/s 271(1)(c) of the Act by returning following findings :-

“8. I have considered the submissions of both the parties and carefully gone through the material available on the record. It is noticed that an identical issue has been adjudicated in the case of ITO V s Smt. Purnima Devi Gupta (supra) wherein it has been held as under :

“The assessee had shown gross receipts of Rs.10,96,370/- from bus plying business which were estimated by the AO at Rs.16,95,506 and the AD determined the income of the assessee by applying net profit rate of 33 per cent. The action of the AO was confirmed by the CIT(A), however, the Tribunal estimated the gross receipts at Rs. 15,00,000 and directed the AO to apply a net profit rate of 20 per cent subject to depreciation and interest to third parties. From the above facts it would be clear that there was an estimate at the level of the AD as well as at the level of Tribunal in respect of receipts as well as net profit rate. The above facts clearly show that the income of the assessee was estimated and nothing has been brought on record by the AO that the assessee concealed any particulars of income or furnished inaccurate particulars of income, It cannot be said that the addition made in the hands of the assessee was on account of any concealment by the assessee. Therefore, the provisions of s. 271(1)(c) were not applicable to the facts of the present case. It cannot be said that in the case of assessee there was any fraud or gross willful neglect to return the correct income. In that view of the matter also the penalty was not leviable under s. 271 (1)(c). No penalty under s. 271 (1)(c) was leviable in the facts of the present case because in this case the income had been estimated and there was no concrete evidence that the assessee furnished inaccurate particulars of income or concealed particulars of its income.

9. In the present case also as we have already pointed out in the former part of this order that the income of the assessee was estimated by the AO and also by the ITAT by applying different rates of net profit. Therefore, by respectfully following the aforesaid referred to order of the co-ordinate Bench of the ITAT, Jodhpur, the penalty levied by the AO u/s 271(1)(c) of the Act

was rightly deleted by the ld. CIT(A) I do not see any merit in this ground of the departmental appeal.”

15. In view of what has been discussed above, we are of the considered view that AO has failed to make out a case for furnishing of inaccurate particulars of income or concealment of particulars of income by the assessee so as to attract the provisions contained u/s 271(1)(c) of the Act. More so, when undisputedly, income has been estimated by the AO, there is no scope for concealment by the assessee so as to attract the provisions contained u/s 271(1)(c) of the Act. Consequently, penalty levied by the AO and confirmed by the ld. CIT (A) is ordered to be deleted, hence appeal filed by the assessee is hereby allowed.

Order pronounced in open court on this 25th day of November, 2021.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 25th day of November, 2021.
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Ghaziabad.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**