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

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

ITA No.8104/Del./2018
(ASSESSMENT YEAR : 2012-13)

Shri Bal Kishan Atal, 1610, Madrarsa Road, Kashmere Gate, Delhi – 110 006.	vs.	ACIT, Circle 35(1), New Delhi.

(PAN : AHNPA3020A)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri K. Sampath, Advocate
Shri V. Rajkumar, Advocate
REVENUE BY : Ms. Kirti Sankratyayan, Senior DR

Date of Hearing : 17.11.2021
Date of Order : 24.11.2021

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Shri Bal Kishan Atal (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 10.09.2018 passed by the Commissioner of Income-tax (Appeals)-12, New Delhi affirming the penalty order dated 30.03.2017 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

> **"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming the order of the Assessing Officer imposing penalty u/s 271(1)(c) of the Income-tax Act, 1961 on vague, frivolous and ambiguous ground. It is prayed that the order being arbitrary, erroneous, unlawful, unjustified and opposed to natural justice must be quashed."**

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 the total income of Rs.1,10,57,055/- against the declared income of Rs.24,80,260/- by making additions/disallowances inter alia that disallowance of deduction claimed as per section 54, disallowance on account of non-utilization of amount deposited in capital account, addition on account of difference in cost of acquisition taken for calculation & disallowance of cost of improvement of Rs.62,68,311/-, Rs.19,00,000/-, Rs.1,20,152 & Rs.52,867/- respectively, AO initiated the penalty proceedings u/s 271(1)(c) of the Act. Declining the contentions raised by the assessee, AO proceeded to levy the penalty to the tune of Rs.17,66,820/- @ 100% of the tax sought to be evaded for furnishing inaccurate particulars of income u/s 271(1)(c) of the Act.

3. Assessee carried the matter before the ld. 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 ld. CIT(A),

the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. 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, all the disallowance have been made by the AO by declining the contention of the assessee that disallowance are not sustainable; that one addition of Rs.1,20,152/- has been made due to difference in cost of acquisition taken from the calculations. It is also not in dispute that out of all the additions/disallowances, except addition of Rs.1,20,152/- being the expenses incurred by the assessee at the time of purchase of the property and disallowance of Rs.52,867/- made by the AO and sustained by the ld. CIT (A) on account of cost of improvement of the property, have been deleted by the **coordinate Bench of the Tribunal vide order dated 06.03.2019 in ITA No.2649/Del/2016 for AY 2012-13 in assessee's own case**.

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 in case 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 further contended that AO has failed to record valid satisfaction during assessment proceedings if the assessee has furnished inaccurate particulars of income or has concealed particulars of income rather recorded generic satisfaction at the fag end of the assessment order that, *"penalty proceedings u/s 271(1)(c) are initiated separately";* and that no penalty can be levied u/s 271(1)(c) in case assessee has failed to furnish the documents.

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:-

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

Dated: 22.08.2014

To

Shri Bal Kishan Atal
1610, Madarsa Road,
Delhi – 110 006.

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

- ***Have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961 dated……***
- ***Have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2,3,4 and 5.***
- ***Have failed to furnish the return of income for AY.Y. 2011-12 as required by section 139 before the end of relevant assessment year.***

You are requested to appear before me at 11.00 AM on 15.09.2014 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 considers before any such order is made under section 271.

Yours faithfully,
Sd/-
(PRIYANKA DURBEY)
Assistant Commissioner of Income-tax,
Circle 20(1), New Delhi."

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 deciding the identical issue dismissed 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 of2016 by order dated 5th August, 2016."***

12. Following the decisions rendered in the cases of ***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 while framing the 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. concealing particulars of income or furnishing inaccurate particulars of such income, penalty proceedings have been initiated rather generic satisfaction has been recorded at the fag end of the assessment order that, *"penalty proceedings u/s 271(1)(c) are initiated separately"*. AO was required to apply his mind to record a valid satisfaction qua every addition/disallowance in a specific manner so as to move the penal provisions contained u/s 271(1)(c) of the Act into motion. So, we are of the considered view that on the basis of vague,

ambiguous and in valid satisfaction, penalty proceedings initiated are itself not sustainable in the eyes of law.

14. In view of what has been discussed above, AO has failed to make out a case of concealment of income or furnishing of inaccurate particulars of income by the assessee so as to direct the provisions contained u/s 271(1)(c) of the Act, hence penalty levied by the AO and sustained by the ld. CIT (A) is hereby ordered to be deleted. Consequently, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 24th day of November, 2021.

Sd/-	**sd/-**
(ANIL CHATURVEDI)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 24th day of November, 2021
TS

Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT(A)-12, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.