

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

ITA No. 1133/DEL/2017 [A.Y 2011-12]

Mridu Hari Dalmia
4, Scindia House
New Delhi

Vs.

The D.C.I.T.
Circle 1(2)(2)
New Delhi

PAN: AADPD 6744 R
(Applicant)

(Respondent)

Assessee By : Shri Dharan Gandhi, Adv

Department By : Ms. Radha Katyal Narang, Sr. DR

Date of Hearing : 13.12.2021

Date of Pronouncement : 13.12.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the CIT[A]- 42, New Delhi dated 20.12.2016 pertaining to Assessment Year 2011-12.

2. The assessee has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case and in law, the notice issued u/s 274 r.w.s 271(1)(c) dated 31.03.2015 is bad in law and consequently, the penalty levied in pursuance of the said notice should be deleted.*

2. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the action of the Assessing Officer in levying penalty u/s 271(1)(c) of the Act. Of Rs. 6,96,223/-*

3. *The above grounds of appeal are without prejudice to one another."*

3. The roots for levy of penalty lie in the assessment order framed u/s 143(3) of the Act by which the returned income of Rs. 87,53,200/- was assessed at Rs. 1,04,66,910/- after making addition of Rs. 17,13,707/-. The said addition was on account of non-inclusion of income of Rs. 17,13,707/-. Penalty proceedings were separately initiated for concealment of particulars of income and for furnishing of inaccurate particulars thereof.

4. Penalty was subsequently levied @ 100% of the taxes sought to be evaded at an amount of Rs. 6,96,223/-. While levying penalty, the Assessing Officer, at para 7 of his order, observed that the present case would fall under concealment of income and furnishing of inaccurate particulars of income.

5. The representatives of both the sides were heard at length, the case records carefully perused.

6. Notice u/s 274 r.w.s 271(1)(c) of the Act read s under:

(1)

**NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(c) OF
THE INCOME TAX ACT 1961**

Office of the
Assistant Commissioner of Income Tax
Circle -1(2)(2), International Taxation,
Room No. 409, E-2 Tower, 4th Floor, Civic Centre
Near Minto Road, New Delhi -110002, INDIA
Dated: 31.03.2015

AADPD6744R

To

Sh. Mridu Hari Dalmia
4 Scindia House, Connaught Place,
New Delhi- 110001

1.

Whereas in the course of proceedings before me for the assessment year 2011-12. If appears to me that you have concealed the particulars of income or furnishing inaccurate particulars of income.

You are hereby requested to appear before me at **11.30 AM** on **15-04-2015** show cause why an order imposing a penalty on you should not be made under section 271 (1)(c) 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 representative 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.

15/24

23/85

Seal



(SR)
Assessing Officer

(SHELENDRA SRIVASTAVA)
Asstt. Commissioner of Income Tax
Circle-1(2)(2), (International Taxation)
Room No. 410, 4th Floor, E-2 Block,
Pratyaksh Kar Bhawan, Civic Centre,
J. L. Nehru Marg, New Delhi-110002

TWO COPY
[Signature]

7. A perusal of the above shows that the Assessing Officer was not certain whether penalty was leviable for concealment of income or for furnishing of inaccurate particulars of income.

8. We have given thoughtful consideration to the orders of the authorities below. The Hon'ble Delhi High Court in case of Pr. CIT vs. Sahara India Life Insurance Company Ltd. ITA 475 of 2019, 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."

9. Similar view was taken by the Hon'ble High Court of Karnataka in the case of SSA Emerald Meadows ITA No. 380 of 2015. The relevant findings of the judgement read as under:

"Notice issued by the Assessing Officer u/s 274 r.w.s 271(1)(c) of 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 issue was decided in favour of the assessee."

10. A SLP of the revenue against this judgement of the Hon'ble High Court of Karnataka was dismissed by the Hon'ble Supreme Court in 73 taxmann.com 248.

11. Respectfully following the binding decision of the Hon'ble Jurisdictional High Court of Delhi, we direct the Assessing Officer to delete the penalty levied under section 271(1)(c) of the Act.

12. Before parting, the assessee has raised an additional ground which reads as under:

"The Id. CIT(A) erred in stating that Rs. 35,89,225/- has remained unexplained whereas the assessee has only offered to tax Rs. 22,53,148/-. The Id. CIT(A) also erred in stating that he is separately informing the Assessing Officer about the said difference and such statement of the Id. CIT(A) is erroneous, contrary to record irrelevant and without putting to the assessee."

13. In support of his contention, the Id. AR relied upon several judicial decisions.

14. We have carefully considered the judicial decisions relied upon by the assessee. In our considered opinion, all the judicial decisions are misplaced and not relevant to the facts of the case in as much as the Id. CIT(A) has not given direction to the Assessing Officer to make further addition but has simply informed about the difference in amount offered for taxation vis a vis unexplained foreign receipts.

15. A perusal of the findings of the ld. CIT(A) clearly show that he has not transgressed his powers nor he has issued any unwarranted direction to the Assessing Officer. The additional ground raised is accordingly dismissed.

16. In the result, the appeal of the assessee in ITA No. 1133/DEL/2018 is partly allowed.

The order is pronounced in the open court on 13.12.2021 in the presence of both the representatives.

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 13th December, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,

ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	