

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “A” DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As. No.5132/DEL/2017 & 5133/DEL/2017  
Assessment Years 2009-10 & 2010-11

Aesthetica Enterprises P. Ltd., C-30, Panchsheel Enclave, New Delhi.	vs.	ACIT, Central Circle-6, New Delhi.
TAN/PAN: AAGCA9296B		
(Appellant)		(Respondent)

Appellant by:	Shri P.C. Yadav, Adv.		
Respondent by:	Shri Mukesh Jha, Sr.DR		
Date of hearing:	06	01	2022
Date of pronouncement:	07	01	2022

**ORDER**

**PER PRADIP KUMAR KEDIA - A.M.:**

The above captioned appeals have been filed by the Assessee against the order of the Id. Commissioner of Income Tax (Appeals)-XXIV, New Delhi [for short “CIT(A)”] dated 29.06.2017 arising from the order passed by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 (for short “Act”) concerning Assessment Years 2009-10, 2010-11. Since the issues involved in all these cases are similar and interconnected, therefore, these appeals were heard together and are being disposed of by way of this common order. The following grounds raised in both the appeals are as under:

**ITA No.5132/Del/2017**

“1. That the Ld. CIT (Appeal) has erred in upholding the penalty of Rs. 1,67,942/- imposed by the AO., invoking the provisions of sec 271(1)(c) of IT Act 1961.

2. *That the Ld. CIT (Appeal) has erred in upholding the penalty of Rs. 1,67,942/-, without considering the facts and circumstances of the case and relying on irrelevant judicial pronouncements.*

3. *That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.”*

ITA No.5133/Del/2017

“1. *That the Ld. CIT (Appeal) has erred in upholding the penalty of Rs. 3,58,595/- imposed by the AO., invoking the provisions of sec 271(1)(c) of IT Act 1961.*

2. *That the Ld. CIT (Appeal) has erred in upholding the penalty of Rs. 3,58,595/- , without considering the facts and circumstances of the case and relying on irrelevant judicial pronouncements.*

3. *That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.”*

2. We shall first take up **ITA No.5133/Del/2017** concerning Assessment Year 2010-11 for the purposes of adjudication.

3. As per the grounds of appeal in ITA No.5133/Del/2017, the assessee seeks to challenge imposition of penalty of Rs.3,58,595/- levied under Section 271(1)(c).

4. When the matter was called for hearing, the learned counsel for the assessee at the outset referred to the petition filed under Rule 11 of the ITAT Rules to seek leave of the Tribunal to raise additional grounds which reads as under:

*“a) On the facts and under the circumstance of the case the penalty levied under Section 271(1)(c) of the Act is void as the notice u/s.274 read with Sec. 271 is bad and defective as it is*

*issued without deleting the appropriate clause under which the penalty is proposed to be imposed is either for filling of inaccurate particular of income or concealment of particulars of income and as such the notice is not sustainable and not curable.”*

5. It was pointed out that the additional ground arises from the facts available on record and also goes to the root of the issue, therefore, same may be permitted to be raised belatedly at this stage in the light of the decision of Hon’ble Supreme Court in the case of *CIT vs. Varas International as reported in 284 ITR 80 (SC)* and *National Thermal Power Co. Ltd. vs. CIT reported in 229 ITR 383 (SC)*.

6. Having regard to the fact that the additional ground raised concerning jurisdiction to impose penalty and a validity of notice issued under Section 274 r.w. Section 271(1)(c) of the Act which goes to the root of the matter, the additional ground so raised is admitted for adjudication.

7. Ld. counsel adverted to the impugned penalty notice dated 20.06.2014 and submitted that the nature of default committed by the assessee is not known as the inappropriate portion in the relevant column of the show cause notice has not been struck off. Consequently, the Assessing Officer himself was unsure of the category under which the default is blamed on the assessee. Consequently, the penalty order passed in consequence of such defective notice suffers from non application of mind and lack of satisfaction towards nature of default. It was further pointed out that the assessee belongs to Rockland Group of companies where the search was conducted on 06.09.2011, and in the identical set of facts, the penalty imposed u/s.271(1)(c) was deleted in other group cases owing to similar defective notice. A reference was made to

the decision of Co-ordinate Bench of Tribunal in *Radhika Surgical Pvt. Ltd. vs. ACIT in ITAs No.5090, 5091 and 5092/Del/2017* and *M/s. Akhil Meditech Pvt. Ltd. in ITAs No.5118, 5119, 5120 and 5121/Del/2017* where in the identical fact situation the penalty has been quashed. A further reference was made to the decision of the Hon'ble High Court in case of (i) *PCIT vs. Sahara India Life Insurance Co. Ltd. as reported in 432 ITR 84 (Del.)*; (ii) *CIT & Anr. v. Manjunatha Cotton and Ginning Factory, 359 ITR 565 (Karn)*; (iii) *Mohd. Farhan A. Shaikh vs. Dy. CIT [2021] 434 ITR 1 [Bom (FB)]*, for the proposition that notice issued under Section 274 r.w. Section 271(1)(c) of the Act is bad in law where it did not specify under which limb of Section 271(1)(c) of the Act, penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. It was thus urged that the whole proceedings seeking to impose penalty is *nonest* and bad in law at the threshold and consequently the penalty order in pursuance of the defective notice requires to be struck down.

8. Ld. DR for the Revenue, on the other hand, relied upon the first appellate order. It was further submitted that the penalty notice referred to and relied upon on behalf of the assessee cannot be seen on a standalone basis and requires to be read in conjunction with the assessment order where the specific satisfaction has been drawn and spelt and the assessee has not objected to any alleged vagueness in the notice at the time of participation in the penalty proceedings before the Assessing Officer. It was further submitted that having regard to the nature of addition, viz., addition towards undisclosed income offered before Settlement Commission etc., the nature of default *per se* is not relevant to defend the circumstances for concealment of income. Ld. DR further submitted that the ratio of

various decisions referred to and relied upon are not relevant in the peculiar facts of the case. He thus submitted that no interference with the order of the CIT(A) is called for in either of the appeals.

9. We have carefully considered the rival submissions. As pointed out on behalf of the assessee, a position has been taken by the Co-ordinate Bench of the Tribunal in other group cases in the identical fact situation. The Co-ordinate Bench has applied the law as expounded by the Hon'ble Jurisdictional High Court and other Hon'ble Courts of different jurisdiction. It may be pertinent to extract the relevant operative paragraph of the decision rendered by the Co-ordinate Bench in the case of *Radhika Surgical Pvt. Ltd. vs. ACIT in ITAs No. 5090, 5091 & 5092/Del/2017*, stated to be a group case, for the purposes of easy reference.

*8. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to levy of penalty under section 271(l)(c) of the Act. We find that the identical issue arose in the case of the assessee in A.Y. 2008-09 and the Co-ordinate Bench of Tribunal in ITA No. 5088/Del/2017 for A.Y. 2008-09 vide order dated 21.01.2021 has deleted the penalty by observing as under:*

*“3. Search and seizure action u/s 132(4) of the Income Tax Act, 1961 (hereafter referred to as the “the Act”) was carried out in the Rockland group of cases on 06.09.2011. Subsequent to the search and seizure action, assessment proceedings were carried out u/s 153C r.w.s. 143(3), by issue of notice dated 05.08.2013 to the appellant to file the return of income. In response, the assessee filed return of income on 10.09.2013, disclosing the total income as NIL. Subsequently, the assessee filed an application for settlement u/s 245C of the Act before the Income Tax Settlement Commission in the capacity of a “related” person, related to the other assessee’s of the Rockland group who had also filed settlement applications as “specified person” u/s 245C(i) proviso (i). However, the assessee's application was rejected by the Income Tax Settlement Commission vide their order dated 23.04.2013, wherein the Commission held that the assessee does not qualify for admission as a person*

“related to” to the “specified person”. The assessee filed a writ petition before the Hon’ble Delhi High Court, challenging the rejection order of the Settlement Commission, but the petition was dismissed by the Hon’ble Delhi High Court ' on 20.10.2015. Meanwhile, the Assessing Officer passed the assessment order making the following additions over and above the income returned by the assessee:

A.Y	Head of addition	Amount (IN Rs.)
2008-09	(i) Disclosure in settlement application	30,00,000
	(ii) Unexplained cash credits	1,79,56,880/-
	(Hi) Commission paid to secure unexplained cash credits	5,38,706/-

The assessee filed appeal against all the above heads of additions. In the appeal against the quantum additions, the following amounts were confirmed in first appeal.

A.Y.	Head of addition	Amount (IN Rs.)
2008-09	(i) Disclosure in application settlement	30,00,000
	(ii) Unexplained cash credits	2,26,000/-
	(iii) Commission paid to secure unexplained cash credits	1,79,569/-

After giving effect to the order of CIT(A), the Assessing Officer after providing the assessee an opportunity to show cause as to why penalty u/s 271(1)(c) should not be levied for concealment of income, and considering the same, rejected the submissions of the assessee and proceeded to levy penalty at the rate of 100% of the tax sought to be evaded on the amounts confirmed in first appeal.

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 20/06/2014 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 search conducted by the Revenue in the premises of the assessee, while the decision relied by the Assessing Officer as well as CIT (A) that of Hon'ble Supreme Court in case of Mak Data P. Ltd. vs. CIT 358 ITR 593 is relating to survey and there is no issue involved about the notice issued u/s 271(l)(c) r.w.s. 274 of the Act. This case relied by the Revenue is not applicable in the present case due to the distinguishing facts. There is separate provision for penalty in search cases given under the statute after 01.07.2012 that of Section 271AAB of the Act which was totally ignored by the Assessing Officer. Thus, the penalty itself is based on incorrect Section. Therefore we are taking up the contention of the assessee that there is no particular limb mentioned in the notice issued under Section 271(l)(c) r.w.p. 274 of the Act. 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(i)(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(l)(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(l)(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.*

*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.*

*9. Before us, no distinguishing feature in the facts of the case in the-year under consideration and that of earlier year has been pointed out by the Revenue. Further it has also not brought on record any material to show that the decision of the Co-ordinate bench of the Tribunal in assessee's own case for A.Y. 2008-09 has been set aside/ stayed or over ruled by the higher judicial forum. Considering the totality of the aforesaid facts and following the decision of the Co-ordinate bench in the assessee's own case for 2008-09 and for similar reasons, we are of the view that the levy of penalty u/s 271(1)(c) was not justified. We therefore direct its deletion. **Thus the grounds of the assessee are allowed.**"*

10. In parity with a view taken by the Co-ordinate Bench, we are inclined to accept the plea of the assessee that the notice issued for the purposes of imposition of penalty, which suffers from the vice of vagueness, does not provide sound legal basis for imposition of penalty. Consequently, we set aside the order of the CIT(A) and quash the impugned penalty order.

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

12. The facts and issue in ITA No.5133/Del/2017 are identical and consequently, the basis for deletion of penalty in ITA No.5133/Del/2017 applies *mutatis mutandis* in ITA No.5132/Del/2017 concerning Assessment Year 2009-10 as well.

13. Consequently, the penalty order dated 20.06.2014 in ITA No.5132/Del/2017 is also quashed.

14. In the result, both the appeals of the assessee are allowed.

**Order pronounced in the open Court on 07 January, 2022.**

Sd/-

**[KUL BHARAT]**

**JUDICIAL MEMBER**

DATED: 7<sup>th</sup> January, 2022

*Prabhat*

Sd/-

**[PRADIP KUMAR KEDIA]**

**ACCOUNTANT MEMBER**