

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. A. D. Jain, Vice-President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 7787/Del/2018 : Asstt. Year : 2007-08

National Association of Software & Service Companies (NASSCOM), Ground Floor, IETE Building, Property No. 2, Institutional Area, Lodhi Road, New Delhi-110003 (APPELLANT)	Vs	DDIT(Exemption) Inv., Circle-II, New Delhi (RESPONDENT)
PAN No. AAATN2595F		

Assessee by : Sh. Salil Kapoor, Adv.

Revenue by : Ms. Sweta Yadav, Sr. DR

Date of Hearing: 08.02.2022

Date of Pronouncement: 17.03.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-36, New Delhi dated 26.09.2018.

2. Following grounds have been raised by the assessee:

"1. That the Commissioner of Income Tax (Appeals) ['CIT(A)'] erred on facts and in law in cryptically confirming penalty of Rs.2,00,42,898 levied by the assessing officer vide order dated 12.03.2013 passed under section 271(1)(c) of the Income Tax Act, 1961 ('the Act') ['penalty order'].

2. That the CIT(A) erred on facts and in law in not quashing the penalty order even though the same was barred by limitation in terms of section 275(1)(a) of the Act.

2.1 That the CIT(A) erred on facts and in law in holding that the penalty order was passed within time limit prescribed under the section 275(1A) of the Act,

without appreciating that the said section only provides enhanced time to modify existing order and do not provide time limit to pass a fresh order.

3. That the CIT(A) erred on facts and in law in not quashing the penalty order without appreciating that said order is beyond jurisdiction, bad in law and void ab initio, in as much as the same was passed without recording proper satisfaction or specifying charge of default being 'concealment' or 'furnishing of inaccurate particulars of income' either in the notice or in the penalty order.

4. That the CIT(A) erred on facts and in law in confirming penalty under section 271 (1)(c) without appreciating that the appellant had not concealed or furnished inaccurate particulars in respect to expenditure incurred outside India treated as application of income under section 11 of the Act.

5. That the CIT(A) erred on facts and in law in not appreciating that the allowability of expenses incurred outside India for the purpose of achieving charitable objects within India as application of income was a pure legal and debatable issue as is evident from the fact that : (a) substantial question of law was admitted by the High Court and the apex Court; and (b) there were divergent views between the departmental authorities in respect of the said issue."

3. The assessee has also raised the additional grounds of appeal which are as under:

"Ground 6: That the notice issued under section 271(1)(c)/ 274 of the Act, and the order passed under section 271(1)(c) of the Act are illegal, bad in law and without jurisdiction.

Ground 7: That the penalty has been initiated vide notice under section 271(1)(c)/274 of the Act without any specific charge, hence, the said notice and the order passed under section 271(1)(c) of the Act are illegal, bad in law and without jurisdiction.

Ground 8: That satisfaction recorded/charge levied while completing the assessment, and while levying the penalty are vague and general and hence the notice issued under section 274 of the Act, and the order passed under section 271(1)(c) of the Act are illegal, bad in law and without jurisdiction.

Ground 9: That the levy of penalty is illegal, unjust and not in accordance with law as the mandatory requirements of Section 271(1)(c) have not been met in the instant case.

Ground 10: That the said additions made by the AO are based on difference of opinion on account of allowability of the claim of the Assessee, and as such no penalty can be levied in such cases."

4. Admission of the additional ground has been opposed in principle by the Id. DR. Keeping in view, the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. Vs CIT (1998) 229 ITR 383, the additional grounds filed by the assessee is accepted. The relevant portion of the judgment is as under:

"5. Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the

Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

6. In the case of Jute Corporation of India Ltd. v. C.I.T. . this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal [vide, e.g., C.I.T, v. Anand Prasad (Delhi), C.I.T. v. KaramchandPremchand P. Ltd. and C.I.T. v. Cellulose Products of India Ltd. . Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that

question in order to correctly assess the tax liability of an assessee.

8. The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits."

5. Respectfully following the above judgment of the Hon'ble Apex Court, the additional grounds taken up by the assessee are hereby admitted.

6. We find that the page no. 2, the Assessing Officer has mentioned "*penalty proceedings u/s 271(1)(c) have been initiated separately on this account.*" Further, on page no. 3, the Assessing Officer has mentioned that "*issue penalty notice u/s 271(1)(c) of the Income Tax Act, 1961.*"

7. We also find that the page no. 3 of the penalty order reads as under:

"I am satisfied that penalty u/s 271(1)(c) of the Income Tax Act, 1961 is leviable in this case for concealment of income and/or furnishing of inaccurate particulars of income to the extent."

8. We have also gone through the notice u/s 274 r.w.s. 271 of the Income Tax Act, 1961 issued by the Assessing Officer on 30.01.2013 and 28.02.2013. We find that the Assessing Officer has issued the penalty order stating that, *you *have concealed the particulars of your income by furnishing inaccurate particulars of such income."*

9. On this issue, we are guided by the following judgments:
- 1) Karnataka High Court: CIT vs. Manjunatha Cotton and Ginning Factory: 359 ITR 565 held that notice under section 274 should specifically state the grounds mentioned in section 271(1)(c) of the Act, i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy requirement of law.
 - 2) Bombay High Court: Mr. Mohd. Farhan A. Shaikh Vs ACIT Section 271(1)(c): Penalty-Concealment-Non-striking off of the irrelevant part while issuing notice u/s 271(1)(c) of the Income Tax Act, order is bad in law. Assessee must be informed of the ground of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.
 - 3) The Hon'ble jurisdictional Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd. in ITA No. 475 of 2019, reiterated that notice under section 274 should specifically state the grounds on which penalty was sought to be imposed as the assessee should know the grounds which he has to meet specifically.
 - 4) The aforesaid principle has been reiterated in the in the case of CIT vs. SSA'S Emerald Meadows: 73 taxmann.com 241 (Kar) [Revenue's SLP dismissed in 242 Taxman 180]
10. Hence, respectfully following the order of the Hon'ble Jurisdictional High Court, since the AO has not been specified u/s 274 as to whether penalty is proposed for alleged 'concealment of income' OR 'furnishing of inaccurate particulars of such income', the penalty levied is hereby obliterated.

11. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 17/03/2022.

Sd/-

(A. D. Jain)
Vice President

Dated: 17/03/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR