

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No. 6729/Del/2018
Assessment Year: 2014-15

Vineeta Sehgal, A-1/202, Tower No. 6, Purvanchal Heights, Sector-Geta-1, Gr. Noida, Sakirpur, Gautam Budh Nagar (UP)	Vs.	ITO, Ward-4(3), New Delhi.
PAN :ANXPS9638J		
(Appellant)		(Respondent)

Appellant by	Ms.Mansi Jain, CA
Respondent by	Shri Kumar Pranav, SR DR

Date of hearing	14.03.2022
Date of pronouncement	30.03.2022

ORDER

PER ANIL CHATURVEDI:

This appeal filed by the Assessee is directed against the order of learned Commissioner of Income-Tax(Appeals)-2, New Delhi dated 30.07.2018 in appeal No.10070/17-18.

2. Briefly the facts as culled out from the material on record are as under:

‘Assessee is an individual who filed her return of income for assessment year 2014-15 on 15.10.2015, declaring total

income of Rs.1,99,940. The case was selected for scrutiny and thereafter assessment was framed under Section 143(3) of the Income-Tax Act, 1961 vide order dated 26.12.2016 at a total income of Rs.22,19,940, inter alia, by making an addition of Rs.20,20,000 on account of unexplained cash deposits. On the aforesaid addition of unexplained cash deposits, Assessing Officer vide penalty order passed under Section 271(1)(c) of the Income-Tax Act, 1961 dated 29.06.2017 levied penalty of Rs.5,10,861 under Section 271(1)(c) of the Act’.

3. Aggrieved with the order of the Assessing Officer, assessee carried the matter in appeal (Appeal No. 10070/17-18) before the learned Commissioner of Income-Tax(Appeals) who dismissed the appeal of the assessee.

4. Aggrieved by the order passed by the learned Commissioner of Income-Tax(Appeals), assessee is now in appeal before us and raised the following grounds:

“1. On facts and circumstances of the case, the learned Commissioner of Income-Tax(Appeals) erred in upholding the order dated 29.06.2017 passed by the Income Tax Officer Ward 4(3) New Delhi under section 271(1)(c) of the Income-Tax Act which is bad in both the eye of law and on the facts.

2. On facts and circumstances of the case, the learned Commissioner of Income-Tax(Appeals) erred in upholding the order dated 29.06.2017 passed by the Income Tax Officer Ward 4(3) New Delhi under section 271(1)(c) of the Income-Tax Act which is barred by limitation in terms of section 275 of the Income-Tax Act.

3. *On facts and circumstances of the case, the learned Commissioner of Income-Tax(Appeals) erred in law and on facts in upholding the order dated 29.06.2017 passed by the Income Tax Officer Ward 4(3) New Delhi u/s 271(1)(c) of the Income-Tax Act which is void and ab-initio, as the penalty proceedings initiated by issue of notice u/s. 274 read with 271 of the Income-Tax Act without striking off of the irrelevant clause of the notice, meaning thereby the learned Assessing Officer has not apprised the Appellant about the specific charge under which Appellant has been held guilty of penal action that is whether she had concealed the income or furnished inaccurate particulars.*

4. *On facts and circumstances of the case, the learned Commissioner of Income-Tax(Appeals) erred in law and on facts in upholding penalty, notwithstanding that the Appellant had agreed to additions on the specific understanding that penalty would not be levied u/s 271(1)(c) of the Income-Tax Act by the learned AO.*

5. *On facts and circumstances of the case, the learned Commissioner of Income-Tax(Appeals) erred in upholding penalty of Rs.5,10,861 levied u/s 271(1)(c) of the Income-Tax Act.*

6. *The Appellant craves to leave, add, amend, modify, delete and/or change all or any of the grounds on/or before the date of hearing.”*

5. Before us, at the outset, at the time of hearing, learned AR submitted that though assessee has raised various grounds but the sole controversy is with respect to levy of penalty under Section 271(1)(c) of the Act.

6. Learned Authorized Representative submitted that Assessing Officer had made an addition of Rs.20,20,000 on account of unexplained cash deposits in the bank account. On the aforesaid addition, he levied penalty under Section 271(1)(c) of the Act amounting to Rs.5,10,861 and the penalty was upheld by learned Commissioner of Income-Tax(Appeals). She submitted that in the assessment order, no clear satisfaction has been recorded by the Assessing Officer as to whether it was a case of furnishing inaccurate particulars of income or it was a case of concealment of particulars of income. She thereafter submitted that even in the penalty order passed on 29.6.2017, the penalty has been levied on both the limbs i.e. for concealment of income as well as furnishing of inaccurate particulars of income. She, thereafter, pointed out to the notice issued under Section 274 read with Section 271(1)(c) of the Act dated 26.12.2016 which is placed at page 2 of the paper book and from that she submitted that the notice does not indicate as to what ground the penalty is sought to be imposed i.e. whether it is for concealment of income or for furnishing inaccurate particulars of income. She, therefore, submitted that in the absence of proper satisfaction recorded by the Assessing Officer, no penalty under Section 271(1)(c) of the Act is imposable and in support of

her contention, she placed reliance on the decision of Hon'ble Delhi High Court in the case of Sahara India Life Insurance Co. Ltd. reported in (2021) 432 ITR 84 (Del.) and other decisions.

7. Learned Departmental Representative on the other hand supported the orders of lower authorities & submitted that the assessment order & penalty order have to be seen together & not in isolation.

8. We have heard the rival submissions & and perused the material on record. The issue in the present appeal is with respect to the upholding of levy of penalty u/s. 271(1)(c) of the Act by learned Commissioner of Income-Tax(Appeals). The Assessing Officer has levied penalty u/s. 271(1)(c) of the Act on the additions of unexplained cash deposits made by him. As per the provisions of Section 271(1)(c), if the Assessing Officer or the learned Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under the Act is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct such person shall pay by way of penalty, in addition to the tax payable by him, a sum which shall not be less than but which shall not exceed three times the amount of tax payable by him, the

amount of tax sought to be evaded by reason of concealment of particulars of his income or furnishing of inaccurate particulars of such income. Thus the two key expressions which comprises of two limbs for imposition of penalty u/s. 271(1)(c) of the Act are “concealment of particulars of his income” & “furnishing inaccurate particulars of such income”. It is a settled law that while levying penalty for concealment, the Assessing Officer has to record satisfaction and thereafter come to a finding in respect of one of the limbs which is specified u/s. 271(1)(c) of the Act, namely, whether the assessee has concealed the income or furnished inaccurate particulars of income. Thus the first step is to record satisfaction and come to a finding while completing the assessment as to whether the assessee has concealed its income or furnished inaccurate particulars of income. The Assessing Officer thereafter has to levy penalty u/s. 271(1)(c) of the Act for non-satisfaction of either of the limbs which gets attracted. Thereafter, notice u/s. 274 r.w.s. 271(1)(c) of the Act is to be issued to the assessee. The aforesaid notice should specifically indicate on which ground penalty is sought to be imposed, whether for concealment of income or for furnishing inaccurate particulars of income. In the present case, the perusal of assessment order passed by the Assessing

Officer reveals that in the Assessment Order, no specific finding has been recorded by the Assessing Officer as to whether it is a case of concealment of income or a case of furnishing of inaccurate particulars of income. Further in the notice dated 26.12.2016, issued under Section 274 read with Section 271 of the Act, the copy of which is placed at page 2 of the paper book, the inapplicable portion or limb of Section 271(1)(c) of the Act has not been struck off. It is a settled law that the two limbs i.e. “concealment of particulars of income” and “furnishing of inaccurate particulars of income” carry different connotations. Various High Courts have held that Assessing Officer must indicate in the notice for which of the two limbs he proposes to impose the penalty and for this the notice has to be appropriately marked. If in a printed format of the notice the inapplicable portion is not struck off thus not indicating for which limb the penalty is proposed to be imposed, it would lead to an inference as to non application of mind, thus vitiating imposition of penalty.

9. We find that Hon'ble Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd. (2021) 432 ITR 84 (Del.), after considering the decision in the case of CIT vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Kar) & CIT vs. SSA's Emerald

Meadows (2016) 73 Taxman.com 241 (Kar) [where the SLP filed by Revenue was dismissed and reported in (2016) 386 ITR (ST) 13 (SC)] has held that penalty under Section 271(1)(c) was not leviable when the notice issued by Assessing Officer did not specify as to whether the proceedings were initiated for concealment of particulars of income or for furnishing of inaccurate particulars of income. The relevant portion of the findings of Hon'ble High Court in the case of Sahara India Life Insurance Co. Ltd. (supra) read 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 vs. Manjunatha Cotton & Ginning Factory 359 565 (Kar) and observed that the notice issued by the Assessing Officer 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 CIT vs. SSA’s Emerald Meadows (2016) 73 Taxman.com 241 (Kar.), the appeal against which was dismissed by the Hon'ble 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.”

10. Before us, Revenue has not placed any material to demonstrate that the aforesaid decision of Hon'ble Delhi High Court

in the case of Sahara India Life Insurance Co. Ltd. (supra) has been stayed/set aside/overruled by higher judicial forum. Considering the totality of the aforesaid facts and relying on the aforesaid decision in the case of Sahara India Life Insurance Co. Ltd. (supra), we are of the view that the Assessing Officer was not justified in levying penalty under Section 271(1)(c) of the Act. We accordingly set aside the levy of penalty levied by Assessing Officer and **thus the ground of assessee is allowed.**

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

Order pronounced in the open court on 30th March, 2022

Sd/-
(NARENDER KUMAR CHOUDHARY)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated: 30th March, 2022.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	14.03.2022
2.	Date on which the draft of order is placed before the Dictating Member:	
3.	Date on which the draft of order is placed before the other Member:	14.03.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	14.03.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the final order received after having been singed/pronounced by the Members:	
7.	Date on which the final order is uploaded on the website of ITAT:	30.03.2022
8.	Date on which the file goes to the Bench Clerk	30.03.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	