

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

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

**Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 4661/Del/2017 : Asstt. Year : 2009-10**

MBI International Services Pvt. Ltd., 43B, Okhla Industrial Area, Phase- III, New Delhi-110020 (APPELLANT)	Vs	DCIT, Circle-6(1), New Delhi (RESPONDENT)
<b>PAN No. AADCM5549G</b>		

**Assessee by : Sh. Tavish Verma, Adv.  
Revenue by : Sh. Sunil Kumar Rajwanshi, Sr. DR**

<b>Date of Hearing: 19.04.2022</b>	<b>Date of Pronouncement: 19.04.2022</b>
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**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)-38, New Delhi dated 17.03.2017.

2. Following grounds have been raised by the assessee:

*"1. That on the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals)' ["CIT(A)"] erred in not holding that the order passed under section 271(1)(c) of the Income-tax Act ("the Act") levying penalty of Rs. 16,95,652, was illegal and bad in law.*

*2. That the CIT(A) has erred on facts and in law in confirming levy of penalty of Rs. 16,95,652 under section 271(1)(c) of the Act, in respect of the disallowance of Rs.53,76,703 made in the order passed under section 143(3) of the act, allegedly on the ground that the same was provision for future liability without affording adequate opportunity of being heard to the appellant.*

*2.1 That the CIT(A) erred on facts and in law in confirming levy of penalty under section 271(1)(c) of the Act and not appreciating that penalty proceedings were initiated by the assessing officer without valid satisfaction being recorded in the assessment order, which is sine qua non for assumption of jurisdiction.*

*2.2 That the CIT(A) erred on facts and in law in holding that the AO recorded proper satisfaction for imposition of penalty under section 271(1)(c) of the Act.*

*2.3 That the CIT(A) erred on facts and in law in confirming levy of penalty under section 271(1)(c) of the Act with respect to disallowance of Rs. 53,76,703 on account of 'Key resource Payable and Variable Pay' and Rs. 1,10,850 on account of 'Ex-gratia Payable', made in the assessment, on account of a bonafide dispute which is pending before the Tribunal.*

*2.4 That the CIT(A) erred on facts and in law in not appreciating that there cannot be the aforesaid disallowances made in the assessment order passed under section 143(3) of the Act allegedly on account of a bonafide dispute and as such, does not amount to concealment of particulars of income or furnishing inaccurate particulars of income so as to levy penalty under section 271 (1)(c).*

*2.5 That the CIT(A) erred on facts and in law in observing that the appellant was not able to substantiate its claim either during the assessment proceedings or during the appellate proceedings, while not admitting evidences produce for substantiate it's claim, which were submitted before the Tribunal in the form of additional evidences."*

3. The assessee sought adjournment which has been rejected.

4. The Assessing Officer made addition of Rs.54,87,553/- to the total income on account of the Key Resource Payable, Variable Pay and Ex-gratia Payable during the F.Y. 2008-09.

Consequent to the addition, penalty u/s 271(1)(c) has been levied by the AO.

5. We find that the page no. 2 para 4, of the penalty order, the Assessing Officer has mentioned "*notice under section 274 read with section 271(1)(c) was issued to the assessee on 30.11.2011. Further show cause notice dated 20.06.2014 was issued to the assessee to explain as why penalty under section 271(1)(c) for concealment of income and filing inaccurate particulars of its income may not be imposed.*"

6. We also find that the para no. 6 of the penalty order reads as under:

*"6. In view of the facts and circumstances of the case, a penalty under section 271(1)(c) of the Act of Rs.1695652/- i.e. 100% of the tax sought to be evaded is hereby imposed."*

7. On this issue, we are guided by the following judgments:

- 1) 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.
- 2) 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]

8. Hence, respectfully following the order of the Hon'ble Jurisdictional High Court, since the AO has mentioned that penalty notice has been issued for concealment of income and filing inaccurate particulars of its income (para 4), the penalty levied is hereby obliterated.