IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA.No.8812/Del./2019
Assessment Year 2015-16

Shri Pranav Kumar, New Delhi – 110064 PAN AIJPK7096H C/o. M/s. RRA TAXINDIA, D-28, South Extension, Part-1, New Delhi – 110 049.	vs.	The DCIT, International Taxation, Circle-2(1)(2), New Delhi – 110 002.
(Appellant)		(Respondent)

For Assessee :	Dr. Rakesh Gupta, And Shri Somil Aggarwal, Advocates.
For Revenue :	Shri Sanjay Kumar, Sr. DR

Date of Hearing :	12.04.2022
Date of Pronouncement :	27.04.2022

ORDER

PER ANIL CHATURVEDI, A.M. :

This appeal filed by the assessee has been directed against the order of the Ld. CIT(A)-43, New Delhi in Appeal No.10065/2018-19 dated 17.09.2019 relating to the A.Y. 2015-16.

2. Facts of the case, in brief, are that the assessee is a non-resident individual who filed his return of income for the A.Y. 2015-16 declaring total income of Rs.NIL and claiming refund of Rs.1,57,660/-. The A.O. has noted that during the course of assessment proceedings assessee filed revised return of income declaring total income of Rs.1,17,00,870/-. The return of income was selected for scrutiny. Thereafter, assessment was framed under section 143(3) vide order dated 27.11.2017 and the total income offered by revised return of income amounting to Rs.1,17,00,870/- was accepted. On the aforesaid income of Rs.1,17,00,870/- that was offered by the assessee in the revised return of income, the A.O. vide penalty order passed under section 271(1)(c) of of the I.T. Act, 1961 dated 29.05.2018 levied the penalty of Rs.26,51,420/-.

2.1. Aggrieved by the penalty order, the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 17.09.2019 in Appeal No.10065/2018-19 upheld the penalty levied by the A.O.

3. Aggrieved by the order of the Ld. CIT(A) the assessee is now in appeal before the Tribunal and has raised the following grounds :

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in imposing penalty of Rs.26,51,420/- u/s 271(1)(c) and framing the impugned penalty order without considering the facts and circumstances of the case and without providing adequate opportunity of being heard and without observing the principle of natural justice.*
2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned penalty order passed by Ld. AO in imposing penalty of Rs.26,51,420/- u/s 271(1)(c) and that too without assuming jurisdiction as per law and the impugned penalty order being illegal and void ab initio.*

3. *That in any case and in any view of the matter, action of Ld CIT(A) in confirming the action of Ld. AO in imposing penalty u/s 271(1){c). is bad in law and against the facts and circumstances of the case and barred by limitation also.*
4. *That having regard to the facts and circumstances of the case, Ld. C1T(A) has erred in law and on facts in confirming the action of Ld. AO in imposing penalty and passing the impugned penalty order and that too without recording the mandatory 'satisfaction' as per law and without levying a clear charge either in the penalty notice or in the penalty order whether there was concealment of income or furnishing of inaccurate particulars of income and without the valid approval of Ld. JCIT."*

4. Before us, at the outset, the Learned A.R. of the Assessee submitted that though the assessee has raised various grounds, but, the sole controversy which requires

adjudication is with respect to levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

4.1. Before us the Learned A.R. of the Assessee submitted that assessee is a non-resident Indian. During the year under consideration, assessee had sold a property and the long term capital gain earned on the sale of such property was claimed as deduction under section 54 of the I.T. Act, 1961 in the original return of income.

4.2. He submitted that assessee is a non-resident Indian based in U.K. and living in U.K. since past 20 years and during the impugned assessment year assessee sold a house property located at A-33, Defence colony, New Delhi for a sale consideration of Rs.1,50,00,000/- and had earned long term capital gain of Rs.1,17,00,867/-. He submitted that assessee decided to invest the sale consideration in purchase of another residential house property and he was advised that if the assessee makes investment in house property within two years of sale, he would be eligible to claim deduction and there will be no capital gain tax

liability. He submitted that assessee was not made aware of the requirement of depositing the funds in the capital gain saving account scheme for claiming deduction. He submitted that the assessee being not aware about the intricacies of Income Tax Act, invested the sale consideration in Mutual Funds in order to keep it readily available for utilisation for purchase of house property. Thereafter, assessee was advised about the requirement of depositing the funds in capital gain saving scheme account and the investments in the mutual funds being not permissible form of deposit and, therefore, was not eligible for claiming deduction under section 54 of the I.T. Act, 1961. The assessee upon realising the mistake and foreseeing that he won't be able to buy the property despite the efforts put in by him, he revised its computation of income and paid the taxes thereon. He, therefore, submitted that assessee has not concealed any particulars of income and was under bonafide belief that investment made in mutual funds was an eligible mode for claiming the deduction. 'He further submitted that assessee has filed his

revised return of income within the due time prescribed under section 139(5) of the I.T. Act, 1961 and also much before completion of the assessment and, therefore, the revision of income cannot be disregarded. He, therefore, submitted that when assessee has revised its return of income within the prescribed time and corrected its bonafide mistake and omissions as per the provisions of law, no penalty can be levied for concealment of income. He, therefore, submitted that the penalty levied by the A.O. and upheld by the Ld. CIT(A) be deleted.

4.3. Before us the Learned A.R. of the Assessee pointed to the notice under section 274 r.w.s. 271(1)(c) dated 27.11.2017 which is placed at page no.12 of the PB and from that notice he pointed that the notice of penalty is vague as the A.O. has not struck-off the inapplicable clauses. He submitted that it is a settled position of law that notice under section 274 r.w.s. 271(1)(c) should specifically state the ground on which penalty proceedings have been initiated i.e., whether penalty has been levied for concealment of particulars of income or for furnishing

inaccurate particulars of income. He submitted that mechanical signing printed form without striking-off inapplicable portion would not satisfy the requirement of law and in support of the aforesaid contentions, he placed reliance on the decision of Hon'ble Delhi High Court in the case of Pr. CIT vs., Sahara India Life Insurance Company Ltd., reported in [2021] 432 ITR 84 (Del.).

5. The Ld. D.R. on the other hand supported the orders of the lower authorities.

6. We have carefully considered the rival submissions made by both the sides and perused the material on record. The issue in the present appeal is with respect to levy of penalty under section 271(1)(c) of the I.T. Act, 1961. In the present appeal, the show cause notice dated 27.11.2017 that was issued under section 274 read with section 271(1)(c) of the I.T. Act, 1961 reveals that A.O. has not recorded any clear cut satisfaction as to whether the penalty under Section 271(l)(c) of the Act has been levied

for concealment of income or for furnishing of inaccurate particulars of income.

6.1. 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(l)(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(l)(c) of the Act, which was accepted b y 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(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 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. "

6.2. We further find that Full Bench of Hon'ble Bombay High Court in the case of Mohd. Farhan Sheikh [2021] 434 ITR 1 (Bom.) (FB) after considering various decisions, cited therein, has held that notice in printed form

without deleting inapplicable portions is not valid. The relevant observations of Hon'ble High Court are under:

> *"Question No. 3: What is the effect of the Supreme Court's decision in Dilip N Shroff on the issue of non application of mind when the irrelevant portions of the printed notices are not struck off ?*
>
> *187. In Dilip N. Shroff, for the Supreme Court, it is of "some significance that in the standard proforma used by the Assessing Officer in issuing a notice despite the fact that the some postulates that inappropriate words & paragraphs were to be deleted, but the same had not been done." Then, Dilip N. Shroff, on the facts, has felt that the Assessing Officer himself was not sure whether he had proceeded on the basis that the assessee has concealed his income or he had furnished inaccurate particulars.*
>
> *188. We may, in this context, respectfully observe that a contravention of a mandatory condition or requirement for a communication to be valid*

communication is fatal, with no further proof. That said, even if the notice contains no caveat that the inapplicable portion be deleted, it is in the interest of fairness and justice that the notice must be precise. It should give no room for ambiguity. Therefore, Dilip N. Shroff disapproves of the routine, ritualistic practice of issuing omnibus show-cause notices. That practice certainly betrays non-application of mind. And, therefore, the infraction of a mandatory procedure leading to penal consequences assumes or implies prejudice.

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191. As a result, we hold that Dilip N. Shroff treats omnibus show-cause-notices as betraying non-application of mind and disapproves of the practice, to be particular, of issuing notices in printed form without deleting or striking off the inapplicable parts of that generic notice."

6.3. 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) and the Full Bench decision of Hon'ble Bombay High Court in the case of Mohd. Farhan Sheikh (supra) has been stayed/set aside/overruled by higher judicial forum. Further, Revenue has also not placed on record any contrary binding decision in its support. We, therefore, following the aforesaid decision in the case of Sahara India Life Insurance Co. Ltd. (supra), & and decision of Hon'ble Bombay High Court in the case of Mohd. Farhan (supra) are of the view that the Assessing Officer was not justified in levying penalty under Section 271(l)(c) of the Act. We accordingly set aside the levy of penalty levied by Assessing Officer and that was confirmed by the learned Commissioner of Income-Tax (Appeals). Thus, the appeal of the Assessee is allowed.

7. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court on 27.04.2022.

Sd/-	Sd/-
(ANUBHAV SHARMA)	(ANIL CHATURVEDI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Delhi, Dated 27th April, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'D' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.