

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "A" BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI G.S.PANNU, PRESIDENT &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.6565/Del/2018  
[Assessment Year : 2011-12]**

Agarwal Packers & Movers Ltd., Wedding Mall, 3 <sup>rd</sup> Floor, Local Shopping Centre, Pitampura, New Delhi-110034. PAN-AAFCA3559A	vs	DCIT, Central Circle-1(2), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Ruchesh Sinha, Adv.	
<b>Respondent by</b>	Mrs. Kirti Sankratyayan, Sr.DR	
<b>Date of Hearing</b>	10.02.2022	
<b>Date of Pronouncement</b>	29.04.2022	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee is directed against the order of Ld. CIT(A)-I, New Delhi dated 26.09.2018 for the assessment year 2011-12. The assessee has raised following grounds of appeal:-

01. *"The order imposing penalty u/s. 271(1)(c) of the Act is contrary to the facts of the case and prejudicial to the Law.*
02. *On appreciation of the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) ought not to have confirmed the action of the Learned Assessing Officer imposing the penalty of Rs. 16,50,000/-. The*

*appellant has neither concealed her income nor submitted any inaccurate particulars of income. The action of the Learned Commissioner of Income Tax (Appeals) is contrary to the facts of the case and deserves to be deleted.*

03. *That any other grounds of appeal may be added/deleted or amended at the time of hearing.*

*Therefore it is prayed that penalty as impugned U/S 271(1)(c) of the Act by the A.O. may please be cancelled or any other suitable order as the Hon'ble Bench may deem fit be passed.”*

2. In addition to these grounds, the assessee has also raised following additional grounds:-

1. *“That the order imposing penalty is bad in law and void ab initia since the date of initiation of the penalty proceedings in the assessment order u/s 143(3) and subsequently by way of show cause notice issued u/s 274 read with section 271, the AO has not apprise the assessee about the specific charge, under which assessee has been held guilty of penal action.”*

### **FACTS OF THE CASE**

3. Facts giving rise to the present appeal are that the assessee filed its return of income at Rs.1,54,88,170/- on 30.09.2011. The assessment u/s 143(3) of the Income Tax Act, 11961 (“the Act”) was framed vide order dated 28.02.2014. Thereby, the income was

assessed at Rs.2,13,61,910/- after making additions in respect of wrong claim of deduction u/s 24(a) of the Act of Rs.34,93,054/-; disallowance of excess depreciation on vehicles of Rs.15,72,137/-; and disallowance of interest u/s 36(1)(iii) of the Act of Rs.8,08,560/-. The assessee carried further appeal to Ld.CIT(A) who deleted the disallowance of interest u/s 36(1)(iii) of the Act of Rs.8,08,560/-, rest of the additions were sustained. The assessee did not file appeal against the order of Ld.CIT(A). Subsequently, the Assessing Officer ("AO") issued a notice u/s 271(1)(c) of the Act to show cause why the penalty should not be levied. In response thereto, the assessee filed its response stating that deduction u/s 24(a) of the Act was claimed by the assessee through a bonafide and inadvertent error. The assessee had disclosed and furnished true and correct particulars of its income. It was further submitted that bonafide mistake or inadvertent human error could not mean that the assessee was guilty of either furnishing of inaccurate particulars as was attempting to conceal its income. The reliance was placed on the judgement of Hon'ble Supreme Court in the case of *Price Waterhouse Coopers (P) Ltd. vs CIT [SC] 348 ITR 306*. Further, it was submitted that the claim was made under the bonafide belief that such deduction was available. It was contended

that the assessee disclosed and furnished the correct particulars of his income. However, the AO did not accept this contention of the assessee and he proceeded to levy the impugned penalty u/s 271(1)(c) of the Act.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who also sustained the penalty. Now, the assessee is in appeal before this Tribunal.

5. Ld. Counsel for the assessee submitted that objection of the assessee against levy of penalty are in threefold. **Firstly**, he contended that by way of additional ground, the assessee has challenged legality and validity of initiation of penalty proceedings on the ground that the notice issued u/s 271(1)(c) of the Act is defective since it does not specify the charge. To buttress this contention, the Ld. Counsel for the assessee drew our attention to Paper Book page 11 where the impugned notice is enclosed. Ld. Counsel for the assessee relied on various case laws in support of his submissions, more particularly in the judgement of Hon'ble Delhi High Court rendered in the case of *PCIT vs Sahara India Life Insurance Company Limited* in ITA No.475/2019 order dated 20.08.2019. **Secondly**, the AO failed to appreciate the fact that in

respect of deduction claimed u/s 24(a) of the Act was inadvertent and bonafide mistake as the assessee had disclosed income from house property. He placed reliance on the decision of the Hon'ble Supreme Court in the case of *Price Waterhouse Coopers (P) Ltd. vs CIT* (supra). **Thirdly**, he contended that addition regarding disallowance of depreciation was claimed as the vehicles were purchased and registered on 31.03.2011. It was contended that Ld.CIT(A) himself allowed this claim in succeeding year. Moreover, vehicles were ready to use and law is well settled when the vehicles were ready to use in that event depreciation would be allowable. In support of this contention, reliance was placed on the judgement of the Hon'ble Delhi High Court rendered in the case of *CIT vs Integrated Technologies Ltd. in ITA No.530/2011*. It was contended that the claim of depreciation was allowed by the Ld.CIT(A) in the case of the assessee for the succeeding year under identical facts and circumstances. It was submitted that the assessee had disclosed true and correct particulars of its income at the time of filing of its return and had neither concealed any particulars of its income nor furnished inaccurate particulars of income. All the requisite details and explanation were filed from time to time. Reliance was placed on the judgement of Hon'ble Supreme Court in

the case of *CIT vs Reliance Petroproducts (P.) Ltd.* [2010] 322 ITR 588.

6. Ld.Sr.DR opposed these submissions and supported the orders of authorities below. He contended that assessee is a company and can afford to hire services professionals. The contention that there was bonafide error is not supported by any credible evidences. Therefore, he contended that Ld.CIT(A) has rightly sustained the penalty and under the facts and circumstances of the present case, no interference is called for.

7. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We are of the considered view that the plea of the bonafide and inadvertent error is to be tested on the facts of the each case. Moreover, there is no straight jacket formula to say that particular act was a bonafide error or another a deliberate act. The assessee is required to demonstrate from the records that such error occurred due to inadvertent and was not deliberate to avoid tax liability. In the case in hand, the assessee has successfully demonstrated that claim of deduction u/s 24(a) of the Act, was made as the rent was offered for tax under the income from house

property. Therefore, in the light of the judgement of Hon'ble Supreme Court in the case of *Price Waterhouse Coopers (P) Ltd. vs CIT* (supra), the penalty imposed by the AO on this issue cannot be sustained. The AO is therefore directed to delete the penalty.

8. Now, coming to the penalty confirmed in respect of addition sustained on account of disallowance of claim of depreciation. One of the averments of the assessee before the authorities below was that under the identical facts, the Ld.CIT(A) allowed the claim of depreciation in succeeding year. This fact is not rebutted by the Revenue. It was further contended that the assessee had disclosed and furnished true and correct particulars of its income at the time of filing of return. The assessee had not acted in defiance of law and did not act on conscious in this regard to the law. In this regard, reliance was placed on the judgement of the Hon'ble Supreme Court in the case of *CIT vs Reliance Petroproducts (P.) Ltd.* (supra).

9. We find merit into the contention of the assessee merely because if a claim is rejected by the Assessing Officer, would not *ipso facto* made the assessee liable for penalty. In the present case the Ld.CIT(A) himself allowed the claim of depreciation under the

identical facts in the succeeding year. The Revenue has not pointed out any change into the facts and circumstances of the case in the year under appeal. Therefore, in the light of the judgement of Hon'ble Supreme Court in the case of *CIT vs Reliance Petroproducts (P.) Ltd.* (supra), the levy of penalty was not justified. We therefore, hereby direct the Assessing Officer to delete the penalty. Hence, the assessee succeeds on merit. The grounds raised by the assessee against the levy and confirmation of penalty are allowed.

10. In addition to this, the assessee has raised an additional ground wherein Ld. Counsel for the assessee submitted that the notice issued by the AO u/s 271(1)(c) of the Act suffers from patent illegality and contrary to the settled position of law. He contended that the Assessing Officer failed to disclose the specific charge for which the assessee was being made liable for penalty. In the absence of such charge, the initiation of penalty proceedings would fail the test of law. He placed reliance on the judgment of Hon'ble Delhi High Court in the case of *PCIT vs Sahara India Life Insurance Company Limited* (supra) and judgement of Hon'ble Karnataka High Court in the case of *CIT vs Manjunatha Cotton & Ginning Factory* [2013] 359 ITR 565.

11. Ld. Sr. DR opposed these submissions and supported the orders of authorities below. He contended that the assessee was well aware of charge. It participated in the penalty proceedings and made submissions. Now at such a belated stage, the assessee should not be allowed to raise such a plea. He contended that it is not the case of an ignorant assessee. Moreover, during the proceedings before the authorities below, no such ground or objection was raised. Hence, he prayed that the additional ground raised in this appeal be dismissed.

12. We have heard the contentions of both parties and perused the material available on record and gone through the orders of the authorities below. Admittedly, the AO vide notice dated 28.02.2014 called upon the assessee as to why the penalty should not be imposed vide notice dated 28.02.2014. For the sake of clarity, relevant contents of the notice dated 28.02.2014 are reproduced hereunder:-

*“Whereas in the course of proceedings before me for the assessment year 2011-12 it appears to me that you:-*

*\*have concealed the particulars of your Income or furnished inaccurate particulars of such Income.*

*You are hereby requested to appear before me at 11.30 AM on 31/03/2014 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.”*

13. From the above, it is evident that the notice does not specify the specific charge therefore, in the light of the judgement of Hon'ble Delhi High Court in the case of *PCIT vs Sahara India Life Insurance Company Limited* (supra), the initiation of penalty proceedings is not in accordance with law. The Hon'ble Delhi High Court in the case of *PCIT vs Sahara India Life Insurance Company Limited* (supra) has held that *“in such facts where the limb of the section is not struck off in the notice issued u/s 274 r..w.s. 271(1)(c) of the Act, then the levy of penalty u/s 271(1)(c) of the Act suffers from infirmity.”*

14. Looking to the facts and circumstances of the case, we find merit in the contention of the Ld. Counsel for the assessee. We hold that penalty proceedings suffers from patent infirmity. Thus, the additional ground raised by the assessee is allowed.

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

Order pronounced in the open Court on 29<sup>th</sup> April, 2022.

**Sd/-**

**(G.S.PANNU)**  
**PRESIDENT**

*\* Amit Kumar \**

Copy forwarded to:

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

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI