

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 1900/DEL/2019**  
**[Assessment Year: 2009-10]**

M/s Ashoka Machine Tools Intl. Pvt. Ltd. 18/13, Ganga Plaza, Ist Floor, WEA, Pusa Lane, Karol Bagh, New Delhi-110002 PAN- AAACA2041E	<u>Vs</u>	Income-tax Officer, Ward 3(3), New Delhi
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>		<b>Sh. Manish Malik, Sh. Vinod Gupta, Adv.</b>
<b>Respondent by</b>		<b>Sh. Om Prakash, Sr. DR</b>
<b>Date of hearing</b>		<b>11.05.2022</b>
<b>Date of pronouncement</b>		<b>19.05.2022</b>

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-1, New Delhi, dated 31.12.2018, pertaining to the assessment year 2009-10. The assessee has raised following grounds of appeal:

*“1.1. That the Hon’ble CIT(A) grossly erred in sustaining the order of penalty passed u/s. 271(1 )(c) of the I.T. Act, 1961 imposing penalty amounting of Rs. 2,47,955/- levied by the Assessing officer.*

*1.2. That on the facts and the circumstances of the case the Hon’ble*

*CIT(A) failed to appreciate that the penalty amounting to Rs. 2,47,955/- u/s 271(1 )(c) of the Act is not excigible in law, as the appellant has neither concealed particulars of income and nor furnish inaccurate particulars of income.*

*2.1. That the Hon'ble Commissioner of Income-tax (Appeals) grossly erred in facts and in law, in sustaining the penalty levied u/s 271(1 )(c) of the Act amounting to Rs. 2,47,955/- failing to appreciate that the notice issued u/s 274 r.w.s. 271 of the Act for initiating penalty for concealment of income was vague and not specific for which, the said penalty is leviable.*

*2.2. That the Hon'ble CIT(A) ought to have deleted the penalty amounting to Rs. 2,47,955/- holding that the notice not specifying whether the same as being initiated for concealment of particulars of income or furnishing inaccurate particulars of income was vitiated in law.*

*3. That the appellant craves, leave to add, amend or alter any grounds of appeal either or at the time of hearing of the appeal.”*

2. At the outset learned counsel for the assessee submitted that the entire proceedings initiated vide impugned notice by the Assessing Officer is illegal and unjustified and contrary to the law laid down by the by the Hon'ble Jurisdictional High Court of Delhi in the case of PCIT Vs. Sahara India Life Insurance Company Ltd. (2021) 432 ITR 84 (Del); PCIT Vs. GOA Coastal Resort & Recreation Pvt. Ltd. - (2020) 272 Taxman 157 (Bom.); and PCIT Vs. GOA Coastal Resorts and Recreation pvt. Ltd. (2021) 282 Taxman 463 (SC).

3. On the contrary, learned DR opposed the submissions and submitted that the assessee cannot take benefit of procedural irregularity. He further contended that the assessee participated in the proceedings and, therefore, the assessee was well versed with the reason for which the penalty was being imposed.

4. I have heard rival submissions, perused the material on record. There is no dispute with regard to the fact that the notice issued u/s 271(1)(c) of the Act does not specify the specific charge. For the sake of clarity, the notice dated 21.12.2016 is reproduced herein below:

*“F. No. ITO/WARD-3(3)/2016-17/*

*Dated: 21.12.2016*

*NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX*

*271(1) (c)*

*M/s. Ashoka Machine Tools International Pvt. Ltd.  
 B-68/3,  
 Wazirpur Industrial Area,  
 Delhi 110052*

*In the course of proceedings before the AO for the assessment year 2009-10 it appears to me that you:-  
 have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5.*

*You are hereby given an more opportunity to appear before me: at 11:00 A.M. on 12,01.2017 and ' show Cause why an order imposing, a' penalty on you- should not be made under section 271(1 )(c) of the Income-Tax Act, 1-961. 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(1)(c).*

*Sd/-  
 (V.V. Rajeevan)  
 Income Tax Officer  
 Ward-3(3), New Delhi”*

5. I find that on identical facts ITAT Delhi Bench ‘B’ of this Tribunal in the case of Deloitte Haskins & Sells Vs. DCIT vide its order dated 04.03.2020(ITA no. 675/del/2015) deleted the penalty levied u/s 271(1)(c), inter alia, observing as under:

*“6. We have gone through the record in the light of the submissions made*

*on either side. It could be seen from the assessment order that the learned Assessing Officer proposed the proceedings under section 271(l)(c) of the Act for concealing the particulars of income and furnishing of inaccurate particulars thereof. When it came to the notice issued under section 274 read with section 271 of the Act, such a notice does not specify whether it is for concealment of income or for furnishing of inaccurate particulars thereof, against which the assessee had to defend itself. Order under section 271(l)(c) of the Act narrates that the penalty was leviable under section 271(1)( c ) of the Act for concealment of income and furnishing of inaccurate particulars thereof. In this fact situation we shall refer to the decisions relied upon by the Ld. AR.*

7. *In the case of CIT vs Manjunatha Cotton & Ginning Factory; 359 ITR 565 (Kar), vide paragraph 60, the Hon'ble Karnataka High Court has held as follows:*

*"60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(l)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the*

*penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable."*

8. *In Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 taxman.com 241 (Kar) the Hon'ble Karnataka High Court Considered the question of law as to,-*

*"Whether, omission if assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?"*

9. *And the Hon'be High Court answered the same in favour of the assessee observing that:*

*"The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(l)(c) of the Income Tax Act, 1961 (for short 'the Act') to be bad in law as it did not specify which limb of Section 271(l)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of COMMISSIONER OF INCOME TAX - VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed."*

10. *The Special Leave Petition filed by the Revenue challenging the*

*aforesaid judgement of the High Court was dismissed by the Hon'ble Supreme Court holding:*

*"We do not find any merit in this petition. The special leave petition is, accordingly, dismissed."*

*11. In PCIT vs. Sahara India Life Insurance Company Limited case ITA No 475/2019 and batch order dated 02/08/2019, Hon'ble Delhi High Court, upheld the view taken by the Tribunal basing on the decision of the Hon'ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra) and SSA's Emerald Meadows (supra) wherein it was held that the notice issued by the learned Assessing Officer would be bad in law if it did not specify under which limb of section 271(l)(c) of the Act the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or for furnishing of inaccurate particulars thereof. Relevant observations of the Hon'ble High Court read that,-*

*"21. The Respondent had challenging the upholding of the penalty imposed under section 271(l)(c) of the Act, which was accepted by the ITAT. It followed the decision of Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) and observed that the notice issued by the AO 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 judgement in the subsequent order in Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 taxman.com 241 (Kar), the appeal against which was dismissed by the Supreme Court of India in SLP No. 11485 of 2016 by order dated 5<sup>th</sup> August, 2016.*

*22. On this issue again this court is unable to find any error having been committed by the ITAT."*

*12. It is, therefore, clear that for the AO to assume jurisdiction u/s 271(l)(c), proper notice is necessary and the defect in notice u/s 274 of the Act vitiates the assumption of jurisdiction by the learned Assessing Officer to levy any penalty. In this case, facts stated supra, clearly establish that the notice issued under section 274 read with 271 of the Act is defective and, therefore, we find it difficult to hold that the learned AO rightly assumed*

*jurisdiction to pass the order levying the penalty. As a consequence of our findings above, we direct the Assessing Officer to delete the penalty in question.”*

6. I find that the Division Bench of the ITAT in the aforesaid case, in arriving at its decision, has duly taken into consideration the decision of the Hon’ble Delhi High Court rendered in the case of PCIT Vs. Sahara India Life Insurance Company Ltd. (2021) 432 ITR 84 (Del). In view of the aforesaid binding precedence the impugned penalty order is hereby quashed being not in accordance with law. Accordingly, the penalty levied u/s 271(1)(c) of the Act is deleted.

7. Assessee’s appeal is allowed.

Order pronounced in open court on 19<sup>th</sup> May, 2022.

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI