

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

Before Sh. A.D. Jain, Vice President

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

ITA No. 3364/Del/2018 : Asstt. Year: 2006-07

M/s Unified Infrastructure Pvt. Ltd., 502, D Mall, Netaji Subhash Palace, Pitampura, New Delhi	Vs	DCIT, Central Circle, Karnal
(APPELLANT)		(RESPONDENT)
PAN No. AAACU7954Q		

ITA No. 3365/Del/2018 : Asstt. Year: 2006-07

M/s Unified Developers Pvt. Ltd., 502, D Mall, Netaji Subhash Palace, Pitampura, New Delhi	Vs	DCIT, Central Circle, Karnal
(APPELLANT)		(RESPONDENT)
PAN No. AAACU7955R		

**Assessee by : Ms. Kamal Sharma, Adv.
Revenue by : None (Adj. Application)**

Date of Hearing: 10.05.2022	Date of Pronouncement: 20.05.2022
------------------------------------	--

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of the Id. CIT(A)-3, Gurgaon dated 28.02.2018.

2. Since, the issues involved in both the appeals are identical, they were heard together and being adjudicated by a common order.

3. The Assessing Officer made addition of Rs.1,55,00,000/- to the total income on account of share capital/share application money and share premium. Consequent to the addition, penalty u/s 271(1)(c) has been levied by the AO.

4. We find that the page no. 16, the Assessing Officer has mentioned that *"it is concluded that an amount of Rs.1,55,00,000/- which is introduced as share capital/share application money and share premium are unexplained cash credit u/s 68 of the Income Tax Act, 1961 and is added to the returned income of the assessee and penalty proceedings u/s 271(1)(c) read with Explanation 5A is also initiated for concealing and furnishing inaccurate particulars of the assessee."*

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

"The then Assessing Officer has, therefore, rightly initiated penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 on the amount of Rs.1,55,00,000/- for concealing and furnishing inaccurate particulars of income."

6. We have also gone through the notice u/s 274 r.w.s. 271 of the Income Tax Act, 1961 issued by the Assessing Officer on 15.10.2018. We find that the Assessing Officer has issued the penalty notice stating that, you *"have without reasonable cause failed to furnish by a notice given under section 22(1)/22(2)/34 of the Indian Income Tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice. "have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of Indian Income Tax Act, 1922 or under section*

142(1)/143(2) of the Income Tax Act, 1961. "have concealed the particulars of such income or furnished inaccurate particulars of such income."

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

- 1) Karnataka High Court: CIT vs. Manjunatha Cotton and Ginning Factory: 359 ITR 565 held that notice under section 274 should specifically state the grounds mentioned in section 271(1)(c) of the Act, i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy requirement of law.
- 2) Bombay High Court: Mr. Mohd. Farhan A. Shaikh Vs ACIT Section 271(1)(c): Penalty-Concealment-Non-striking off of the irrelevant part while issuing notice u/s 271(1)(c) of the Income Tax Act, order is bad in law. Assessee must be informed of the ground of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.
- 3) 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.
- 4) 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 not been specified u/s 274 as to whether penalty is proposed for alleged 'concealment of income' OR 'furnishing of inaccurate particulars of such income', the penalty levied is hereby obliterated.

9. In the result, the appeals of the assessee are allowed.
Order pronounced in the open court on 20/05/2022.

Sd/-

(A.D. Jain)
Vice President

Dated: 20/05/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR