

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. NARENDER KUMAR CHOUDHARY, JUDICIAL MEMBER**

ITA No. 7716/Del/2019
(Assessment Year : 2007-08)

Anack Sales Pvt. Ltd. D-122, Defence Colony, New Delhi-110 024 PAN No. AAGCA 1214 M (APPELLANT)	Vs.	DCIT Circle – 2(2) New Delhi (RESPONDENT)
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Assessee by	Shri R. S. Ahuja, C.A.
Revenue by	Shri Zahid Parvez, Sr. D.R.

Date of hearing:	09.06.2022
Date of Pronouncement:	09.06.2022

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 16.07.2019 of the Commissioner of Income Tax (Appeals)- I, New Delhi relating to Assessment Year 2007-08.

2. Brief facts of the case as culled out from the material on record are as under:-

3. The assessee is a company who filed its return of income for A.Y. 2007-08 on 03.11.2017 declaring total income of Rs.4,71,19,977/- on account of capital gain. The return of income was initially processed u/s 143(1) of the Act. Thereafter, the proceedings u/s 147 were initiated by issuing notice u/s 148 of the Act dated 23.03.2013. Consequently, assessment was framed under Section 148/143(3) of the Income Tax Act, 1961 (the Act) vide order dated 30.03.2013 and the total taxable income was determined at Rs.5,10,37,290/- by *inter alia* making addition at Rs.77,00,000/- u/s 68 of the Act. On the aforesaid addition of Rs.77,00,000/-, AO vide order dated 18.06.2018 passed u/s 271(1)(c) of the Act, levied penalty of Rs.26,10,300/-.

4. Aggrieved by the order of Assessing Officer, assessee carried the matter before the Commissioner of Income Tax (Appeals) who vide order dated 16.07.2019 in Appeal No.96/18-19 upheld the levy of penalty and dismissed the appeal of the assessee.

5. Aggrieved by the order of the CIT (Appeals) assessee is now in appeal before us and has raised the following grounds:-

(A). *That on the facts and circumstances of the case the learned AO and CIT(A) erred in :*

1. *Imposing a penalty of Rs.26,10,300/-.*

2. *In the assessment order the AO has said that in view of the above I am satisfied that the Assessee had furnished inaccurate particulars of income and concealed the income of Rs.77,00,000/-. Therefore*

penalty proceedings under section 271(1)(c) of the I.T. Act 1961 have been initiated on this issue.

While in the notice under Section 274 read with section 271 of the income tax Act 1961 have concealed the particulars of yours income or furnished inaccurate particulars of such income.

In the penalty order the AO has said it is a clear case that the assessee has concealed the particulars of its income to the extent of Rs.77,00,000/-. Hence, I am satisfied that this is a fit case for the penalty for concealment of an income amounting to Rs.77,00,000/- as per provisions of the Section 271(1)(c) of the Act. It is therefore apparent that the penalty has been initiated on the grounds of furnishing inaccurate particulars whereas the penalty has been imposed on a different ground of concealment of income. This is bad as per law and the penalty does not stand.

In making the addition as the amount of Rs.70,00,000/- was shown in the Balance Sheet by way of Notes of Accounts and the AO has taken the cognizance from the balance sheet only. Mere addition does not concealment.

(B) The assessee craves leave to add, alter or amend the grounds of appeal at and before the hearing.”

6. Before us, at the outset, Ld. AR submitted that though the assessee has raised several grounds but the sole controversy is with respect to levy of penalty under Section 271(1)(c) of the Act.

7. Before us, Learned AR pointed to the notice issued by the Assessing Officer under Section 274 read with section 271(1)(c) of the Act dated 30.03.2013 which is placed in the paper book and submitted that in the notice the Assessing Officer has mentioned

“have concealed the particulars of your income or furnished inaccurate particulars of such income”. He, therefore, submitted that the Assessing Officer was not sure as to for which limb of section 271(1)(c) of the Act, penalty has been initiated i.e. whether it is for concealment of income or for furnishing of inaccurate particulars of income. He, therefore, relying on the decision of Hon'ble Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd.(2021) 432 ITR 84 submitted that the show-cause-notice issued by the Assessing Officer were illegal and bad in law and, therefore, liable to be quashed.

8. Learned DR, on the other hand, did not controvert the submissions made by the learned authorized representative but, however, submitted that the levy of penalty has to be seen after considering overall conduct of the assessee. He, thus, supported the orders of the lower authorities.

9. We have considered the rival submissions and perused the material available on record. The issue in the present ground is with respect to levy of penalty under Section 271(1)(c) of the Act. In the present appeal, the show-cause-notice dated 30.03.2013 which has been issued by the Assessing Officer under Section 274 read with section 271(1)(c) of the Act reveals that Assessing Officer has not recorded any clear cut satisfaction as to whether the penalty under Section 271(1)(c) of the Act has been levied for

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

10. 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 u/s 271(1)(c) was not leviable when the notice issued by AO 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) reads as under:

“21. The Respondent had challenged the upholding of the penalty imposed under Section 271(1)(c) of the Act, which was accepted by the ITAT. It followed the decision of the 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(1)(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 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 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.”

11. 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) 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) are of the view that the Assessing Officer was not justified in levying penalty under Section 271(1)(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.**

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

Order pronounced in the open court on 09.06.2022, immediately after conclusion of the hearing of the matter in virtual mode.

**Sd/-
(NARENDER KUMAR CHOUDHARY)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 09.06.2022
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Copy forwarded to:
1. Appellant

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	09.06.2022
Date on which the typed draft is placed before the dictating Member	09.06.2022
Date on which the approved draft comes to the Sr.PS/PS	09.06.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	09.06.2022
Date on which the fair order comes back to the Sr. PS/ PS	09.06.2022
Date on which the final order is uploaded on the website of ITAT	09.06.2022
Date on which the file goes to the Bench Clerk	09.06.2022
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	