

**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. 5146/Del/2019
(Assessment Year : 2011-12)

Adesh Kumar Tyagi C/o. RRA Tax India, D-28, South Extension, Part-1, New Delhi-110 049 PAN No. AADPT 4032 A (APPELLANT)	Vs.	ACIT CC-27 New Delhi (RESPONDENT)
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Assessee by	Shri Somil Agarwal, Adv. Shri Deepesh Garg, Adv.
Revenue by	Shri Zahid Parvez, Sr. D.R.

Date of hearing:	08.06.2022
Date of Pronouncement:	08.06.2022

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 06.05.2019 of the Commissioner of Income Tax (Appeals)-4, New Delhi relating to Assessment Year 2011-12.

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

3. The assessee is an individual who stated to be engaged in the business of agriculture. Assessee filed his return of income for A.Y. 2011-12 on 30.07.2011 declaring total income of Rs.30,19,784/-. The case was selected for scrutiny and thereafter assessment was framed under Section 143(3) of the Income Tax Act, 1961 (the Act) vide order dated 24.03.2014 and the total taxable income was determined at Rs.1,74,83,509/- by inter alia making addition at Rs.6,34,025/- on account of other income/ receipts and interest received.

4. Aggrieved by the above addition made by the Assessing Officer, assessee carried the matter before the learned Assistant Commissioner of Income-Tax (Appeals) who deleted substantial additions and upheld the additions to the extent of Rs.6,34,025/- as against the total addition of Rs.1,74,83,509/- made by Assessing Officer. On the addition that were upheld by learned Commissioner of Income-Tax (Appeals), Assessing Officer vide penalty order passed under Section 271(1)(c) of the Income-Tax Act, 1961 of the Act, order dated 21.03.2018 levied a penalty of Rs.3,907/-.

5. Aggrieved by the order of Assessing Officer, assessee carried the matter before the Commissioner of Income Tax (Appeals) who vide order dated 06.05.2019 in Appeal No.02/2018-19/CIT(A)-4, upheld the levy of penalty imposed by Assessing Officer.

6. Aggrieved by the order of the CIT (Appeals) assessee is now in appeal before us 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 passing the impugned penalty order u/s 271 (1)(c) is void-ab-initio as the same has been passed without assuming jurisdiction as per law and without providing adequate opportunity of being heard.*
2. *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 and passing the impugned penalty order and that too without recording the mandatory ‘satisfaction’ as per law and without levying a clear charge in the penalty notice whether there was concealment of income or furnishing of inaccurate particulars of income and without the valid approval of Ld. JCIT.*
3. *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 and that too without assuming jurisdiction as per law and the impugned penalty order being illegal and void ab initio.*
4. *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 passing the impugned penalty order and that too without observing the principle of natural justice and without obtaining valid approval of Ld. JCIT before passing the impugned order and therefore not sustainable in the eyes of law.*
5. *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.*
6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the impugned*

penalty order passed by Ld. AO in imposing penalty and that too without recording mandatory "satisfaction" as per law and against the principles of natural justice.

7. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

7. 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.

8. 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 24.03.2014 which is placed at page 18 of the paper book, wherein the Assessing Officer has mentioned "have concealed the particulars of your income or furnished inaccurate particulars of 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.

9. 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.

10. 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 24.03.2014 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.

11. 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.”

12. 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.**

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

Order pronounced in the open court on 08.06.2022, immediately after conclusion of the hearing of the matter in virtual mode.

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

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

Date:- 08.06.2022

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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	08.06.2022
Date on which the typed draft is placed before the dictating Member	08.06.2022
Date on which the approved draft comes to the Sr.PS/PS	08.06.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	08.06.2022
Date on which the fair order comes back to the Sr. PS/ PS	08.06.2022
Date on which the final order is uploaded on the website of ITAT	08.06.2022
Date on which the file goes to the Bench Clerk	08.06.2022
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	