

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "A" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI N.K. CHOUDHARY, JUDICIAL MEMBER

ITA.No.5059/Del./2019  
Assessment Year 2010-2011

M/s. A.R. Chadha & CO. (I) Pvt. Ltd., Office No.8, 1 <sup>st</sup> Floor, Scindia House, Atma Ram Mansion, KG Marg, New Delhi – 110 001 PAN AAACA1108L	vs.	The DCIT  Circle-1(1),  New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Rajan Chopra, C.A.
For Revenue :	Shri Zahid Parvez, Sr. D.R.

Date of Hearing :	07.06.2022
Date of Pronouncement :	07.06.2022

**ORDER**

**PER ANIL CHATURVEDI, A.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-1, New Delhi, dated 18.04.2019 in Appeal No.62/18-19 relating to the A.Y. 2010-2011.

2. Briefly, the facts of the case, are that the assessee is stated to be engaged in the business of dealership for products of JCB India Ltd., (Sales, Services and Spares) and share trading. The assessee electronically filed its return of income for the A.Y. 2010-11 on 27.09.2010 declaring total income of Rs.12,42,24,920/-. The case was selected for scrutiny. Thereafter, assessment was framed under section 143(3) of the I.T. Act, 1961 vide order dated 31.01.2013 determining the total income of assessee at Rs.14,67,58,880/- inter alia making various additions including the disallowance of advertisement expenditure of Rs.10,87,618/-. On the advertisement expenditure of Rs.10,87,618/- that was disallowed. The A.O. vide penalty order passed under section 271(1)(c) of the I.T. Act, 1961 dated 27.02.2018 levied the penalty of Rs.3,58,914/-.

2.1. Aggrieved by the order of the A.O. assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 18.04.2019 upheld the order of the A.O.

3. Aggrieved by the order of the Ld. CIT(A) the assessee is now in appeal before the Tribunal by raising the following ground :

1. *“That the order of Learned CIT(A) sustaining the order of the learned Assessing Officer is bad in law and on facts and is liable to be set aside.*
2. *That on the facts and in the circumstances of the case, the Learned CIT(A) erred in confirming penalty levied u/s. 271(1)(c) by the learned Assessing Officer [Penalty - Rs.3,58,914/-].*
3. *That order passed by Learned CIT(A) and learned Assessing Officer are against the principles of natural justice.”*

4. Before us, the Ld. A.R. reiterated the submissions made before the authorities below and further submitted that assessee had furnished full particulars before the A.O. in respect of the claimed expenditure and has not concealed any particulars of income. He submitted that during the course of assessment proceedings Assessing Officer had

levied penalty on the various additions. However, in the penalty order passed by the Assessing Officer, no satisfaction has been recorded by the Assessing Officer with respect to the disallowance of Rs.10,87,618/- made on account of advertisement expenses. He submitted that Assessing Officer has not stated as to whether the addition of disallowance of advertisement expenses on which the penalty has been levied was a case of furnishing of inaccurate particulars of income or was a case of concealment of income. In support of his contention, he pointed to the order of the AO and submitted that there is no mention in the AO's order about the levy of penalty on the disallowance of advertisement expenses. He further pointing to the notice under section 274 r.w.s 271(1)(c) of the Act submitted that the notice does not indicate on what ground the penalty is sought to be imposed i.e. whether for concealment of income or for furnishing of inaccurate particulars of income. He, therefore, submitted that no penalty is leviable when there is absence of proper satisfaction recorded by Assessing Officer. He also

submitted that mere disallowance of expenses claimed would not attract penalty under Section 271(1)(c) of the Act and for the aforesaid proposition he relied upon the decision of Hon'ble Supreme Court in the case of **CIT Vs. Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 (SC)**. He, therefore, submitted that penalty be deleted.

5. The Ld. D.R, on the other hand, supported the orders of the lower authorities.

6. We have heard the submissions of both the parties and perused the material on record. The issue in the present ground is with respect to the upholding of levy of penalty under section 271(1)(c) of the Act by CIT(A). The AO has levied penalty under section 271(1)(c) of the Act on the addition made by him and upheld by CIT(A). As per the provisions of Section 271(1)(c), if the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under the Act is satisfied that any person has concealed the particulars of his income or furnished inaccurate

particulars of such income, he may direct such person shall pay by way of penalty, in addition to the tax payable by him, a sum which shall not be less than but which shall not exceed three times the amount of tax sought to be evaded by reason of concealment of particulars of his income or furnishing of inaccurate particulars of such income. Thus the two key expressions which comprises of two limbs for imposition of penalty under section 271(1)(c) of the Act are “concealment of particulars of his income” & “furnishing inaccurate particulars of such income”. It is a settled law that while levying penalty for concealment, the AO has to record satisfaction and thereafter come to a finding in respect of one of the limbs which is specified under section 271(1)(c) of the Act, namely, whether the assessee has concealed the income or furnished inaccurate particular of income. Thus the first step is to record satisfaction and come to a finding while completing the assessment as to whether the assessee has concealed its income or furnished inaccurate particulars of income. The AO thereafter has to levy penalty under section 271(1)(c) of the Act for non-

satisfaction of either of the limbs which gets attracted. Thereafter, notice under section 274 r.w.s 271(1)(c) of the Act is to be issued to the assessee. The aforesaid notice should specifically indicate on what ground penalty is sought to be imposed, whether for concealment of income or for furnishing of inaccurate particulars of income. In the present case, the perusal of assessment order passed by the AO reveals that in the assessment order, no specific finding has been recorded by the AO as to whether it is a case of concealment of income or a case of furnishing of inaccurate particulars of income. Further in the notice dated 31.01.2013 issued under section 274 r.w.s 271 of the Act, the copy of which is placed at page 1 of the paper book, the inapplicable portion or limb of section 271(1)(c) of the Act has not been struck off. It is a settled law that the two limbs i.e. “concealment of particulars of income” and “furnishing of inaccurate particulars of income” carry different connotations. Various High Courts have held that AO must indicate in the notice for which of the two limbs he proposes to impose the penalty and for this the notice has to be

appropriately marked. If in a printed format of the notice the inapplicable portion is not struck off thus not indicating for which limb the penalty is proposed to be imposed, it would lead to an inference as to non-application of mind, thus vitiating imposition of penalty.

6.1. 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 under section 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.”*

6.2. 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. Considering the totality of the aforesaid facts and relying on the aforesaid decision in the case of Sahara India Life Insurance Co. Ltd. (supra), we are of the view that the AO was not justified in levying penalty under section 271(1)(c) of the Act. We accordingly set aside the levy of penalty levied by AO and **thus the ground of assessee is allowed.**

**7. In the result, appeal of the assessee is allowed**

Order pronounced in the open court at the time  
of hearing i.e., on 07.06.2022.

Sd/-  
[N.K. CHOUDHARY]  
JUDICIAL MEMBER

Sd/-  
[ANIL CHATURVEDI]  
ACCOUNTANT MEMBER

Delhi, Dated 07<sup>th</sup> June, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT "A" Bench, Delhi
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,  
Delhi.