

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

ITA No. 1548/Del/2019
(Assessment Year : 2009-10)

Mercury Rubber Mills A-112, Gujranwala Town Part-1, Delhi – 110 009 PAN No. AAAPM 8804 G (APPELLANT)	Vs.	ACIT Circle – 36(1) New Delhi (RESPONDENT)
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Assessee by	Shri Kalrav Mehrotra, Adv.
Revenue by	Shri Jeetendra Chand, Sr. D.R.

Date of hearing:	30.08.2022
Date of Pronouncement:	30.08.2022

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 29.10.2018 of the Commissioner of Income Tax (Appeals)-12, New Delhi relating to Assessment Year 2009-10

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

3. Assessee is a company who filed its return of income for A.Y. 2009-10 declaring income of Rs. Nil after claiming deduction of Rs.78,49,966/- under section 80IC of the Act. The assessment was framed u/s 143(3) of the Act vide order dated 30.12.2011 determining the total income at Rs.80,96,472/- by disallowing the claim of deduction under section 80IC of the Act. On the aforesaid disallowance of deduction under section 80IC of the Act, AO vide order passed u/s 271(1)(c) dated 31.03.2017 levied penalty of Rs.25,00,000/- u/s 271(1)(c) of the Act.

4. Aggrieved by the order of AO, Assessee carried the matter before CIT(A) who vide order dated 29.10.2018 in Appeal No.11/17-18 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds of appeal :

- “1. *The Ld CIT(A) has erred in law as well as on facts in confirming the imposing of penalty u/s 271(1)(c) of the Act.*
2. *That the Ld AO has erred in law as well as on facts by issuing notice u/s 274 r.w.s 271(1)(c) of the Act as he did not specify the charge under which penalty was sought to be levied.*
3. *That the assessing officer has failed to appreciate that conditions u/s 271(1)(c) must exist for initiating penalty proceedings and an claim not accepted by the AO does not tantamount to incorrect particulars as this was not the intendment of the legislature.*
4. *Any other ground which the appellant may take with the kind permission of the Hon’ble Tribunal.”*

5. 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.

6. 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 30.12.2011, wherein the Assessing Officer has mentioned “have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2, 3, 4 & 5”. 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.

7. 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.

8. 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 30.12.2011 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.

9. 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.”

10. 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.**

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

**Order pronounced in the open court on 30.08.2022,
immediately after conclusion of the hearing of the
matter in virtual mode.**

**Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

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

Date:- 30.08.2022
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI