

**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. 7055/Del/2018
(Assessment Year : 2011-12)

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| M/s. N. S. Papers Ltd., 8 th K. M. Stone, Jansath Road, Muzaffar Nagar | Vs. | DCIT Circle – 2 Muzaffar Nagar |
| PAN No. AAACR 7902 B | | |
| (APPELLANT) | | (RESPONDENT) |

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| Assessee by | --None-- |
| Revenue by | Shri Jitender Chand, Sr. D.R. |

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| Date of hearing: | 01.09.2022 |
| Date of Pronouncement: | 12.09.2022 |

ORDER

PER ANIL CHATURVEDI, AM:

The present appeal filed by assessee is directed against the order dated 21.08.2018 of the Commissioner of Income Tax (Appeals)-Muzaffar Nagar relating to Assessment Year 2011-12.

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

3. Assessee is a company who is stated to have filed the return of income for A.Y. 2011-12 on 30.09.2011 declaring Nil income.

The case of the assessee was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 31.03.2014 and addition was made on account of disallowance of agricultural income claimed by assessee amounting to Rs.45,87,650/-, addition on account of delayed payment of Rs.1,38,780/- and disallowance of 'Administrative & Selling Expenses'. On account of aforesaid disallowances made by AO, AO levied penalty of Rs.14,17,600/- u/s 271(1)(c) of the Act vide order dated 18.01.2018. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 21.08.2018 in Appeal No.3969-3457-1150-218 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

1. *"That the notice issued u/s 271 (1) (c) and order imposing penalty of **Rs.14,17,600.00** by the assessing officer under said section are illegal, bad in law, and without jurisdiction as assessing officer has not mentioned in notice U/s 271 (1)(c) under which violation he has issued notice U/s 274 of the Act.*
2. *That in view of the facts and circumstance of the case the CIT (A) has erred in law and on facts in imposing the penalty of **Rs.14,17,600.00** U/s 271 (1) (c) of the Act.*
3. *That, the Provisions of **U/s 271(1)(c)** are not at all applicable, in the facts and circumstances, because the appellant had neither concealed particulars of income nor had not filed inaccurate particulars of income and the CIT (A) has failed to appreciate that the additions are made mere on presumptions and issues are debatable.*
4. *That, the Assessing Officer has not recorded his satisfaction, regarding concealment of income in the Assessment Order passed.*
5. *That, the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the penalty imposed **U/s 271***

(1)(c) at Rs.14,17,600.00.

6. *The addition/disallowance has been made merely on the basis of rejection of explanation of the appellant and no material has been brought on record by the AO in support of said addition/disallowance hence no penalty U/s 271(1)(c) could be levied on the basis of such a disallowance.*
7. *That the CIT(A) has erred in law and on facts in non-quashing of penalty proceedings u/s 271(1)(c) which is wrongly initiated by the AO.*
8. *Penalty proceedings have been initiated without any specific charges hence the same are liable to be set aside.*
9. *That in any case the penalty imposed is unjust, arbitrary and highly excessive.”*

4. On the date of hearing, none appeared on behalf of the assessee nor any adjournment application was filed on its behalf though the file reveals that the notice of hearing was served on the assessee. We find that assessee is challenging the levy of penalty u/s 271(1)(c) of the Act and vide Ground No.8, it is one of the ground that penalty proceedings have been initiated without any specific charge. Since the aforesaid issue is a covered issue, we proceed to dispose of the appeal *ex parte qua* the assessee and after hearing the Learned DR.

5. Vide Ground No.8, it is the contention of the assessee that the penalty proceedings has been initiated without any specific charges. We find that vide this Ground assessee's contention is that the penalty proceedings have been initiated without any specific charges. The perusal of CIT(A) order reveals that assessee

had raised this ground before CIT(A) and before CIT(A), assessee has also placed reliance on the decision of Hon'ble Apex Court in the case of CIT vs. SSA Emerald Meadows (2016) 73 Taxman.com 248 (SC) and Hon'ble Karnataka High Court in the case of CIT vs. Manjunath Cotton and Ginning Factory 359 ITR 565. However, CIT(A) did not agree with the contention of the assessee and upheld the levy of penalty by following the decision of Bombay High Court in the case of CIT vs. Kaushaliya (1994) 75 Taxmann 549 (Bombay).

6. Learned DR 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.

7. We have considered the Learned DR 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. Before CIT(A), assessee had submitted that in the notice dated 26.12.2017 issued u/s 274 r.w.s 271(1)(c) the specific limb of Section 271(1)(c) of the Act has not been indicated by AO.

8. 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.”

9. 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 ground of the Assessee is allowed.**

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

Order pronounced in the open court on 12.09.2022

Sd/-

**(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 12.09.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI