

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'C' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.6672/Del./2019  
(ASSESSMENT YEAR : 2010-11)**

International Amusement Ltd.,  
Sector 10, Metro Walk,  
Near Rithala Metro Station,  
New Delhi – 110 085.

vs. DCIT, Central Circle 2,  
New Delhi.

**(PAN : AAACI0169F)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : None

REVENUE BY : Ms. Anjula Jain, CIT DR

Date of Hearing : 14.09.2022

Date of Order : 19.09.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the Id. CIT (A) - 23, New Delhi dated 28.06.2019 pertaining to assessment year 2010-11.

2. The issue raised in the appeal is that Id. CIT (A) erred in confirming the penalty of Rs.3,30,000/- under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act').

3. In this case, consequent upon addition of Rs.10,00,000/- u/s 68 of the Act, penalty u/s 271(1)(c) of the Act was imposed amounting to Rs.3,30,000/-. Before the Id. CIT (A), assessee took the ground that assumption of jurisdiction

by the AO was bad in law inasmuch as AO has not recorded mandatory satisfaction. The contention in this regard was noted by the Id. CIT (A) as under :-

“4.14 The fourth contention of the appellant was that the assessing officer has not mentioned clearly in the show cause notice as to whether the proposed penalty was for concealment of income or furnishing of inaccurate particulars of income. The appellant has relied upon various judicial pronouncements in support of this contention. Mainly i) CIT v, SSA'S Emerald Meadows (2016) 73 taxmann.com 241(Kar), and ii) CIT v. Manjunatha Cotton and Ginning Factory & others (2013) 35 taxmann.com 250 (Karnatak). It was argued that SSA's Emerald Meadows(supra) followed Manjunatha Cotton and Ginning Factory(supra) and SLP has been dismissed against SSA's Emerald Meadows(supra) [2016] 73 taxmann.com 248(SC).”

4. Ld. CIT (A) did not find merit in the submission as, in his opinion, necessary satisfaction has been recorded in the assessment order. He has held as under :-

“4.15 It can be seen from perusal of the satisfaction note recorded in the assessment order that the AO has clearly recorded that penalty proceedings u/s 271 (1 )(c) are being initiated, for furnishing inaccurate particulars of its income and for concealment of (particulars) of income. The assessment order as well as the show cause notice are of the same date. In this case, as is an established practice in Income Tax Department, the assessment order as well as the show cause notice asking why penalty under section 271 (1 )(c) should not be imposed were sent, together. Therefore, neither there is a problem with the recording of satisfaction, nor it can be said that the appellant was not aware of the default for which it was asked to show cause notice. It is not the case of the appellant that satisfaction has been recorded for furnishing inaccurate particulars of its income whereas the show cause notice had specified the default of concealment of particulars of income, In view of the above, discussion, it is seen that the ratios of the judicial pronouncements cited by the appellant do not apply to the present case because the present case is distinguishable on facts. Therefore, this ground is dismissed.”

5. Against the above order, assessee is in appeal before us. We have heard ld. DR for the Revenue. None appeared on behalf of the assessee despite notices.

6. Upon careful consideration, we note that assessee has duly raised issue against the assumption of jurisdiction for the levy of section 271(1)(c) that in the penalty notice, relevant limb was not struck off to specify whether the penalty was for concealment of income or furnishing of inaccurate particulars of income. When the same was not so specified in the penalty notice it has been held in the case laws cited above that mention of the same in the assessment order or penalty order cannot cure fatal short-coming. This view was recently reiterated by Hon'ble Bombay High Court (Full Bench at Goa) in the case of Mr. Mohd. Farhan A. Shaikh v. ACIT in Tax Appeal No. 51 and 57 of 2012 dated 11.03.2021. Accordingly, following the precedent and on the undisputed proposition that relevant limb of the penalty notice was not identified as to whether penalty was for concealment or furnishing of inaccurate particulars of income, we direct that the penalty in this case is liable to be deleted. Hence, we set aside the orders of the authorities below and decide the issue in favour of the assessee.

7. In the result, the appeal of the assessee stands allowed.

**Order pronounced in the open court on this 19<sup>th</sup> day of September, 2022.**

**Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

**Dated the 19<sup>th</sup> day of September, 2022**

**sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-23, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.

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