IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "E" BENCH: NEW DELHI

BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.1138/Del/2019
[Assessment Year : 2010-11]

Max Life Insurance Company Ltd., Plot No.90A, Sector-18, Udyog Vihar, Gurgaon, Haryana-122018. ***PAN-AACCM3201E***	vs	ACIT, Circle-1, LTU, New Delhi.
APPELLANT		**RESPONDENT**

Appellant by	Shri Himanshu Sinha, Adv. & Shri Bhuvan Dhoopar, Adv.
Respondent by	Shri Jeetender Chand, Sr.DR
Date of Hearing	18.10.2022
Date of Pronouncement	18.10.2022

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order of Ld. CIT(A)-22, New Delhi, dated 29.11.2018 for the assessment year 2010-11. The assessee has raised following grounds of appeal:-

1. *"That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding penalty levied by the AO under section 271(1)(c) of the Act without considering the material available on record.*

2. *That on the facts and circumstances of the case and in law, the Ld. CIT(A)/AO has failed to appreciate that the penalty proceedings are separate and distinct from assessment proceedings and mere disallowance of a claim made by the Appellant does not automatically lead to imposition of penalty under section 271(1)(c).*

3. *That on the facts and circumstances of the case and in law, the Ld. CIT(A)/AO has failed to appreciate that the issue involved in Appellant's case is purely a legal issue to be decided on interpretation of the provisions of the Act and merely because Ld. AO adopts a view*

different from the view adopted by the assessee, it does not tantamount to furnishing inaccurate particulars of income.

4. *That on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in concluding that there has been a failure on the part of the Appellant to disclose the true and fair picture of the P/L Account (leading to the computation of income) while disregarding the true and full disclosure made by the appellant in its P&L account as well as the computation of income. While doing so, the Ld. CIT(A) has failed to appreciate the fact that the genuineness of donation expense has not been questioned even by the Hon'ble ITAT in its order passed for the subject AY.*

Each of the above grounds are independent and without prejudice to the other grounds of appeal preferred by the Appellant.

The Appellant prays for leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before, or at the time of hearing of the appeal."

BRIEF FACTS OF THE CASE

2. Facts giving rise to the present appeal are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) r.w.s. 92CA of the Income Tax Act, 1961 ("the Act") was framed vide order dated 21.03.2014. While framing the assessment, the Assessing Officer ("AO") made various additions i.e. profit on sale of investment of Rs.7,10,43,000/-; Provision for bad debts of Rs.21,60,000/-; donation paid of Rs.2,50,00,000/-; penalty/fines paid of Rs.1,64,000/-; short deduction and payments of TDS of Rs.6,95,65,300/-; disallowance of share issue expenses of Rs.2,500/-. Thus, the AO assessed the total income of the assessee company at Rs.56,84,41,016/-. However, the AO allowed set off of business loss carried forward from AYs 2002-03 & 2003-04 to the extent of Rs.56,84,41,016/- thus, the total income was assessed

at NIL after giving set off of loss. The AO initiated penalty proceedings u/s 271(1)(c) r.w.s 274 of the Act separately. Thereafter, the AO vide order dated 29.08.2018 levied impugned penalty u/s 271(1)(c) of the Act amounting to Rs.84,97,000/- in respect of the addition of Rs.2.50 crores i.e. the disallowance of claim of donation paid by the assessee company.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, confirmed the penalty.

4. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

5. Ld. Counsel for the assessee submitted that the authorities below were not justified in levying the penalty and confirmed the same. He submitted that the penalty cannot be confirmed on account of the fact that the initiation of penalty is bad in law as the penalty notice issued by the AO is contrary to the judicial pronouncements of the Hon'ble Jurisdictional High Court and various other decisions of the Co-ordinate Bench of the Tribunal. He drew our attention to pages 1 & 2 of the Paper Book wherein the notices dated 24.03.2014 & 07.08.2018 purported to have been issued by the AO are enclosed. He submitted that a bare reading of aforesaid notices goes to prove that there is no specific charge. Hence, it is ex-facie bad in law and deserves to be quashed. Further, Ld. Counsel for the assessee submitted that the payment of donation was made towards corporate social responsibility of the assessee company. He further submitted that payment of donation to meet the requirement of CSR would pass the test of commercial expediency. Ld. Counsel for the assessee relied upon the decision of the Tribunal in the case of *Surat Electricity Co. Ltd. vs*

ACIT, Circle-4, Surat [2010] 5 ITR 280 (Ahmedabad-ITAT). Ld. Counsel for the assessee reiterated the submissions as made in the written synopsis. For the sake of clarity, the relevant contents of the synopsis are reproduced as under:-

1. Background

1.1. Max Life Insurance Company Ltd. (Appellant) is an Indian Company under Companies Act, 1956 and was established as a joint venture between Max India Ltd. and New York Life International LLC. The Appellant is an Indian Life Insurance Company and has been granted license to undertake life insurance business by the Insurance Regulatory and Development Authority of India (IRDAI).

1.2. The Appellant, carrying on the business of life insurance, is governed by specific provisions of Section 44 read with First Schedule of the Income Tax Act, 1961 (Act).

1.3. For the AY2010-11, the Appellant filed its return of income on 8 October 2010 declaring Nil taxable income (after setting off brought forward losses). The case of the Appellant was selected for scrutiny and the assessment was completed by the Assessing Officer, vide order dated 21 March 2014, wherein the following additions aggregating to Rs. 16,79,3,800/- were made to the income of the Appellant:

S. No.	***Particulars of Additions***	***Amount (in Rs)***
1.	*Profit from sale of investment*	*7,10,43,000*
2.	*Provision for bad debts*	*21,60,000*
3.	*Penalty/ Fines paid*	*1,64,000*
4.	*Expenses on account of default in*	*6,95,65,300*
5.	*Donation paid*	*2,50,00,000*
6.	*Share issue expenses*	*2,500*
Total Additions		***16,79,34,800***

1.4 Along with the assessment order dated 21 March 2014, penalty notice dated 22 March 2014 was issued under Section 271(1)(c) read with Section 274 of the Act by the Assessing Officer.

1.5. On appeal, the Ld. CIT(A) confirmed the additions made by the Assessing Officer. Thereafter, further appeal was filed before the Hon'ble Tribunal. The Hon'ble Tribunal, vide its Order dated 5

January 2018, deleted the all additions made by the Assessing Officer except at S. No.5 i.e. addition of Rs.2.50 crores on account of donation paid.

1.6. *Pursuant to the Order passed by the Hon'ble Tribunal, the Assessing Officer issued show-cause notice dated 07 August 2018 requiring the Appellant to show-cause why penalty under Section 271(1)(c) of the Act should not be levied.*

1.7. *Both the notice dated 22 March 2014 and show-cause notice dated 07 August 2018 did not contain any whisper about the charge under which penalty was sought to be levied.*

1.8. *Consequentially, penalty order dated 29 August 2018 was passed, wherein the Assessing Officer held that Appellant has furnished inaccurate particulars of income in respect of the aforesaid disallowance of donation confirmed by the Hon'ble Tribunal. Accordingly, a penalty of Rs.84,97,000/- (computed @33.99% ofRs.2.50 crores) was levied by the Assessing Officer.*

1.9. *On appeal preferred by the appellant against the aforesaid penalty order, the CIT(A), vide order dated 29 November 2018, confirmed the penalty levied by the Assessing Officer. However, the CIT(A) directed the Assessing Officer to compute tax sought to be evaded in accordance with Section 115B of the Act applicable for companies in life insurance business, thereby granting part-relief to the Appellant.*

1.10. *In the present appeal, the Appellant has challenged aforesaid action of the CIT(A)/ assessing officer in imposing penalty under section 271(1)(c) of the Act.*

2. Appellant's contentions before the Hon'ble Tribunal

2.1. *It is respectfully submitted that the impugned penalty order passed by the assessing officer is without jurisdiction, bad in law and void ab initio, inter-alia, for the reason that:*

a) *valid notice for assuming jurisdiction to impose penalty not issued;*

b) proper satisfaction not recorded by the assessing officer in the assessment order for initiation of penalty proceedings;

c) Quantum & penalty proceedings independent

d) Bonafide claim- No penalty leviable

Re (a): Proper notice not issued

2.2. In the present case, it is submitted that the penalty proceedings were initiated by the Assessing Officer vide notice dated 22 March 2014. (Refer Page 1 of the Penalty Order). However, in the said notice, no default (i.e. concealment of income or furnishing of inaccurate particulars) has been specified by the Assessing Officer. Thus, the Assessing Officer has failed to point out the default of the Appellant and specify the charge.

2.3. In this regard, it is respectfully submitted that it is elementary that for assuming valid jurisdiction to impose penalty, the assessing officer must, first be satisfied, though prima facie, that the assessee has either "concealed income" or furnished inaccurate particulars of income" and on the basis of such satisfaction a show cause notice has to be issued to the assessee specifying the addition/ disallowance in respect of which penalty is sought to be imposed and also the precise charge/ ground on which penalty is proposed to be imposed thereon.

2.4. It is, thus, sine-qua non that penalty notice issued should specifically state the grounds mentioned in section 271(1)(c), i.e. whether it is for 'concealment of income' or for 'furnishing of incorrect particulars of income'.

2.5. The Karnataka High Court in the case of CIT vs. Manjunath Cotton and Ginning Factory: 359 ITR 565 held that penalty notice should specifically state the grounds mentioned in section 271(1)(c) of the Act, i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. The Court categorically held that the assessee should know the grounds which he has to meet specifically,

otherwise, principles of natural justice are offended and subsequently no penalty could be imposed on the assessee. The Court observed as under:

> *"Notice under section 274*
>
> *59. In either event. the person who is accused of the conditions mentioned in section 271 should be made known about the grounds on which they intend imposing penalty on him as section 274 makes it dear that the assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in section 27l(1)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100 per cent, to 300 per cent, of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under section 274 should satisfy the grounds which he has to meet specifically. Otherwise, the principles of natural justice is offended if the show-cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.*
>
> *61 Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind. " (emphasis supplied)*

2.6. The aforesaid decision was recently followed by the jurisdictional High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd.: [2021] 432 ITR 84, wherein it was reiterated that notice under

section 274 r.w.s. 271 (1)(c) should specifically state the grounds on which penalty was sought to be imposed as the assessee should know the grounds which he has to meet specifically.

2.7. *The aforesaid principle has been re-iterated in a plethora of decisions, some of which have been listed as under:*

- *CIT vs. SSA'S Emerald Meadows: 73 taxmann.com 241 (Kar) [Revenue's SLP dismissed in 242 Taxman 180]*
- *CIT vs. Shri Samson Perinchery ITA No. 1154 of 2014 dated 05.01.2017 (Bom- HC)*
- *New Sorathia Engg. Co. v. CIT: 282 ITR 642 (Gujarat)*
- *ACIL Ltd. vs. ACIT: [2022] 194 ITD 708 (Del Trib.)*
- *Ram Singh Saini vs. ITO: ITA No. 6167 of 2019 (Del Trib.)*
- *Ishita Technologies Private Ltd. vs. DCIT: ITA No. 2789 of 2017 (Del Trib.)*
- *Sandeep Aggarwal vs. DCIT: ITA No. 1777 of 2018 (Del Trib.)*

2.8. *In the present case, as stated above, the Assessing Officer has failed to specify any charge in the penalty notice dated 22 March 2014 issued by him. Therefore, it is respectfully submitted that the impugned penalty order is without jurisdiction, illegal and bad in law.*

Re (b): No satisfaction recorded

2.9. *It is respectfully submitted that the impugned penalty order passed by the assessing officer is without jurisdiction, bad in law and void ab initio, inter-alia, for the reason that no valid finding/ satisfaction as required in law, to the effect that the appellant has filed inaccurate particulars of income, was recorded in the assessment order, as explained hereunder:*

2.10. *Section 271(1) of the Act provides that the assessing officer may, in the course of any proceedings under this Act, direct the imposition of penalty under that section, which shows discretion having been conferred on the assessing officer.*

2.11. However, once, on the facts and circumstances of the case, the assessing officer comes to a reasonable conclusion that the penalty needs to be levied, the law mandates that the penalty proceedings should be initiated before the conclusion of proceedings under the Act.

2.12. Therefore, for the imposition of penalty under section 271(1) of the Act, it is respectfully submitted, valid initiation of penalty proceeding in accordance with the provisions of the Act, before the conclusion of assessment proceeding is sine qua non.

2.13. It is trite law that recording of satisfaction is not merely an empty formality since the assessing officer has to apply his mind and form an opinion at the time of disallowing the assessee's claim fully or partly or making an addition to the assessee's income. The assessing officer has to apply his mind - whether the assessee had, on the facts of the case and in view of the position in law, by making a claim or not disclosing an amount, sought to conceal/file inaccurate particulars of income.

2.14. It will be kindly appreciated that merely stating mechanically in the assessment order that the Appellant furnished inaccurate particulars is not sufficient and the penalty proceedings cannot be said to be validly initiated under such circumstances. It is respectfully submitted that the aforesaid observations of the Assessing Officer in the assessment order was a routine direction issued which nowhere goes to show any application of mind by the assessing officer to even come to a prima facie satisfaction that the penalty proceedings under section 271(1)(c) of the Act are required to be initiated in the facts of the present case.

2.15. Reliance in this regard is placed on the following decisions:

- *Diwan Enterprises vs. CIT: 246 ITR 571 (Del)*
- *CIT v. Super Metal Re- rollers (P) Ltd.: 265 ITR 82 (Del)*
- *CIT v. Ram Commercial Enterprises Ltd.: 246 ITR 568 (Del)*
- *CIT vs. Rampur Engineering Co. Ltd.: 309 ITR 143 (Del.) (FB)*

- *Dr Sita Bhagi v. ACIT in ITANos.l286/Del/2017 (Del. Tri.)*

2.16. Kind attention, in this regard, is further invited to the decision of the Kolkata Bench of the Tribunal in the case of ITO vs. Budge Budge Co. Ltd: 100 ITD 387 wherein the Tribunal held that routine statement by the AO in the assessment order that "penalty under section 271(l)(c) is initiated for furnishing inaccurate particulars ” does not constitute valid satisfaction for purposes of levy of penalty under that section. The Tribunal held that the bare minimum is that the language must clearly spell out the reasons as to why the assessing officer feels satisfied about the guilt of the assessee.

2.17. As observed by the Courts in the above cited judicial pronouncements, the recording of satisfaction by the assessing officer has to be categorical and should be apparent on a bare reading of the assessment order and is not something which can be read. The satisfaction assumes importance because it forms the very basis for levy of penalty under section 271 (1)(c) of the Act. In the absence of such a finding, in view of the decisions of the Courts (supra), initiation of the proceedings itself is vitiated.

2.18. In view of the aforesaid, the penalty proceedings under section 271 (1)(c) of the Act were not, it is submitted, validly initiated and the impugned order passed pursuant thereto is, therefore, bad in law.

Re (c): Quantum & penalty proceedings independent

2.19. It is, at the outset, submitted that it is settled law that findings given in assessment proceedings are relevant but such findings alone are not material and may not justify the imposition of penalty in a given case, because the considerations that arise in penalty proceedings are different from those in assessment proceedings.

2.20. Section 271(1) of the Act, as reproduced supra, provides that the assessing officer may, in the course of any proceedings under this Act, direct the imposition of penalty under that section. In our respectful submission the lawmakers have deliberately used the word

"may" in section 271(1) of the Act, which shows that discretion in this regard has been conferred on the assessing officer. Merely because certain additions/ adjustments are made in the assessment, it does not necessarily follow that penalty is to be levied.

2.21. Penalty under section 271 (1)(c) of the Act can be imposed only if the Appellant either, (a) concealed the particulars of his income; or (b) furnished inaccurate particulars of his income. Even mere existence of such concealment or furnishing of inaccurate particulars alone, it is submitted, also does not lead to automatic initiation of penalty proceedings under section 271(1)(c) of the Act.

2.22. Kind attention in this regard is invited to the decision of the Delhi High Court in the case of CIT Vs. Globe Sales Corporation: 196 CTR 187, wherein it was held that the use of expression "may" clearly-show that penalty is not an automatic consequence of concealment of income or furnishing inaccurate particulars thereof. The Court observed as under:

> *"6. A bare reading of the provisions of section 271(1), which vests the authorities concerned with the power to impose penalty, clearly postulates that an officer has to record his satisfaction in terms of the section that it was a fit case for initiation of a penalty proceedings. Furthermore. use of expression 'may' clearly shows that penalty is not an automatic consequence of concealment of income or furnishing inaccurate particulars thereof. Wide discretion has been given to the Assessing Officer and other authorities to apply their mind and come to a conclusion in the light of the statutory provisions as to whether they would or would not like to initiate the penalty proceedings keeping in view of the facts and circumstances of the case. The cumulative reading of the above referred provisions leaves no doubt in our mind that the discretion to be exercised by the officer has to be for valid and proper reasons,*

which are in consonance with the spirit section 271(1) of the Act. ” (emphasis supplied)

2.23. It is also settled law that findings given in assessment proceedings are relevant, but such findings alone are not material and may not justify the imposition of penalty in a given case, because the considerations that arise in penalty proceedings are different from those in assessment proceedings. Reference, in this regard, may be made to the following decisions:

- *CIT v. Arctic Investment (P) Limited 190 Taxman 157 (Del.)*
- *CIT vs. J. K. Synthetics Limited: 219 ITR 267 (Del)*
- *Jainarayan Babulal vs. CIT: 170 ITR 399 (Bom)*

2.24. The Karnataka High Court in the case of CIT vs. Manjunath Cotton and Ginning Factory (supra), categorically held that the penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings. It was further observed that findings recorded in the assessment proceedings insofar as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on merits.

2.25. The aforesaid judicial precedents make it clear that penalty proceedings are independent from assessment proceedings. In the penalty order the assessing officer/ appellate authority must independently consider the submissions of the appellant and record reasons warranting imposition of penalty in respect of adjustments/ additions/ disallowance made.

2.26. In view of the aforesaid settled legal position, it is respectfully submitted that in the present proceedings the submissions made by the appellant merits independent and judicious consideration without

being prejudiced by the fact that the disallowance of donations made has been confirmed by the Hon'ble Tribunal.

2.27. In the present case, however, the Assessing Officer proceeded to impose penalty simply on the ground that the addition made, was affirmed by the Hon'ble Tribunal, which is contrary to the legal position elaborately discussed supra.

2.28. For this reason, too, the penalty imposed in the impugned penalty order is vitiated and bad in law.

Re (d): Bona-fide legal claim - no penalty

2.29. Without prejudice to the aforesaid submissions, it is submitted that complete disclosures were made with regard to the claim of donation and the claim was a bona fide legal claim on which two views are clearly possible, therefore, penalty under section 271(1)(c) of the Act is not leviable.

2.30. It is submitted that issue of taxability of life insurance companies has been subjected matter of dispute and litigation since way back. The various issues associated with it (including whether claim of donation is to be allowed or not) are vexed, complex and debatable issues of law. Further, the claim made by the Appellant is bonafide and supported by various legal precedents which, in our humble submission, cannot be said to be furnishing inaccurate particulars of income.

2.31. Further, it is submitted that the Hon'ble Tribunal in the Appellant's own case for other AYs (i.e. AY 2006-07, 2012-13, 2013-14 and 2014-15) has allowed the deduction of donations paid under Section 80G of the Act. [Refer Pages to of the Case Law Compilation.

2.32. In view of the above, it cannot be said that the appellant's claim was false, not bona fide or unsubstantiated so as to be subjected to levy of penalty under section 271(l)(c) of the Act.

2.33. It is respectfully submitted that in terms of Explanation 1 to section 271(1)(c) of the Act, penalty could be imposed only if the assessee's

case falls in either of the two following two limbs, viz. (A) and (B) as under:

(A) fails to offer any explanation or offers an explanation which is found by the assessing officer to be false; or

(B) offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to computation of his total income have been disclosed.

2.34. On a careful perusal of the aforesaid clause (A), it is noted that the same applies if either of the following exists:

(a) the assessee does not offer any explanation; or

(b) offers and explanation which is found to be false.

2.35. Clause (B), on the other hand, applies if the following three conditions cumulatively exist:

(a) Assessee offers an explanation which he is not able to substantiate; and

(b) Assessee fails to prove that such explanation is bona fide; and

(c) All the facts relating to the same and material to computation of his total income have not been disclosed.

2.36. It is, thus, emphatically submitted that in the present case, the aforesaid claim on account of donation had been made bonafidely after disclosing the entire particulars, which has not been accepted by the revenue authorities on a mere difference of opinion. It is not even a case where either of the limbs of Explanation 1 to section 271(l)(c) of the Act may be applied since in the present case neither the appellant has (a) failed to offer any explanation; nor (b) offered any explanation which has been found to be false.

2.37. The assessing officer has, however, failed to record any finding/reasoning to come to any conclusion and levied the penalty in a very mechanical and routine manner by merely relying upon the

order of the Hon'ble Tribunal in quantum proceedings. In these circumstances, it is respectfully prayed that penalty imposed by the assessing officer is liable to be deleted in toto.

2.38. Reliance, in this regard, is placed on the decision of Supreme Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd.: 322 ITR 158. In that case, for the relevant assessment year, the assessee filed return of income, while claiming interest expenditure incurred in respect of loan borrowed for purchasing shares by way of its business policies. The assessing officer disallowed the said expenditure by applying provisions of section 14A of the Act and simultaneously levied penalty under section 271(1)(c) of the Act for alleged furnishing of inaccurate particulars of income. The Supreme Court held that, since the assessee had not furnished inaccurate particulars of income and disallowance under section 14A was made merely on bonafide difference of opinion, penalty under section 271 (1)(c) of the Act could not have been levied. Accordingly, the apex Court deleted the penalty levied by the assessing officer. The relevant observations of the Supreme Court are as under:

> *"A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the Learned Counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular " is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the Section 271(l)(c) would embrace the meaning of the details of the claim made.*

It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The Learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income ", We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars "(emphasis supplied)

2.39. Their Lordships further observed that once the assessee had furnished all the details of the expenditure as well as income in its return, which details in themselves, were not found to be inaccurate, penalty was not leviable under section 271(l)(c) of the Act. The pertinent observations of the Court are reproduced as under:

"It was tried to be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an

item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1) (c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(l)(c). That is clearly not the intendment of the Legislature, ''(emphasis supplied)

2.40. In the case of CIT vs. Rahuljee & Co.: 250 ITR 225 the Delhi High Court upheld the deletion of penalty by the Tribunal holding that Explanation 1(B) to s. 271(1)(c) prescribed that penalty could be imposed only if (a) assessee had not been able to substantiate the explanation, (b) such explanation was not bona fide, and (c) all the facts relating to the same and material to the computation of his total income had not been disclosed by him.

2.41. It follows that if the particulars filed along with the return by the assessee are factually accurate, merely because in law the claim made on the basis of stated facts is not admissible, would not mean that assessee has filed inaccurate particulars of income, so as to be visited with levy of penalty under section 271(1)(c) of the Act.

2.42. The aforesaid decision of the Supreme Court and jurisdictional Delhi High Court is squarely applicable in the facts of the present case since

complete particulars in respect of above claim of the appellant were filed along with the return of income and none of the particulars relating to the said claim has been found to be inaccurate/ false.

2.43. Specific reliance in this regard, is placed on the following decisions:

- *CIT vs. Udaipur Hotels Ltd: 35 taxmann.com 207 (Del)*
- *DIT vs. Administrator of the Estate of Late Mr. E.F. Dinshaw: 35 taxmann.com 95 (Bom):*
- *Advisory Services (P) Ltd vs. DCIT: I.T.A. No. 255/Kol/2012 (Kol Tri.),*
- *Amruta Organics Pvt. Ltd vs. DCIT: ITA.No. 1121/PN/2011 (Pune)*

2.44. In view of the aforesaid, it is respectfully submitted, that where full and correct facts have been disclosed by an assessee and the disallowance is made simply on the basis of bonafide difference of opinion, the Appellant cannot be alleged for furnishing of inaccurate particulars of income, warranting imposition of penalty under section 271(1)(c) of the Act."

6. On the contrary, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

7. We have heard both authorized representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The challenge of the assessee against the levy of the penalty are two folds, **firstly,** the notice issued by the AO does not meet the requirement of law; and **secondly,** claim of the assessee was bonafide. For the sake of clarity, the relevant content of the notices issued by the AO are reproduced as under:-

F.No. DCIT/LTU/2013-14/ 627 ***Date:22.03.2014***

To

The Principal Officer,
M/ s. Max New York Life Insurance Co. Ltd.,
3rd Floor, Max House, Okhla 1, Dr. Jha Marg,
New Delhi.

Sir,

Sub:- Penalty Proceedings u/s 271(l)(c)r,w.s 274 of the Act for the A.Y. 2010-11 -reg.-

During the assessment proceedings penalty proceedings u/s 271(l)(c) was initiated in the case of M/ s. Max New York Life Insurance Co. Ltd. for the A.Y. 2010-11. In this regard you are requested to explain as to why an order imposing penalty u/s 271 (1XC) should not be passed in your case. In this respect you may file written submission or attend the office of the undersigned either in person or through an authorized representative duly authorize in the behalf at Large Tax Payer Unit (LTU), NBCC Plaza, Pushp Vihar, Saket, New Delhi - 110017 on 11.04.2014 at 11:45 A.M.

Please note that in case of non-compliance it will be presumed that you have nothing to say in the matter and penalty proceedings would be disposed off on the basis of material facts available on record.

Sd/-
(Virendra Kumar Sheoran)
Dy, Commissioner of Income Tax (LTU),
New Delhi.

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F.No.ACIT/LTU-1&2/Penalty/F.Y.2018-19/326 ***Dated-07.08.2018***

To,

The Principal Officer
M/s Max New York Life Insurance Co. Ltd,
3rd Floor, Max House, Okhla 1,
Dr. Jha Marg, New Delhi.

Sir/Madam,

Subject: Show cause notice in respect of Penalty Proceeding U/s 271(l)(c) read with section 274 of for the assessment year 2010-11 -regarding.

Please refer to the above mentioned subject.

The Hon'ble ITAT vide appellate order ITA No.l42/Del/2017 dated 05.01.2018 has pronounced the order therefore in order to decide the pending penalty proceeding you are hereby given the show cause notice as to why the penalty should not be levied u/s 271 (l)(c).

You are hereby requested to file your explanation before the undersigned in person or through Authorized Representative on or before 16.08.2018 failure of which the issue of penalty will be decided on the basis of facts available on record.

Yours faithfully

Sd/-

(Parul Gaur)
Assistant Commissioner of Income-Tax,
Circle-18,2, LTU. New Delhi

8. In support of this contention, the notices are illegal and do not meet the requirement of law. Reliance was placed upon the judgement of Hon'ble Jurisdictional High court in the case of *PCIT vs Sahara India Life Insurance Co. Ltd. [2021] 432 ITR 84* and judgement of Hon'ble Karnataka High Court in the case of *CIT vs SSA's Emerald Meadows 73 taxmann.com 241 (Kar.).* He further relied upon the order of Hon'ble Supreme Court whereby the SLP in the case of *CIT vs SSA's Emerald Meadows* was dismissed in *242 Taxman 180.* Reliance was placed upon the Co-ordinate Bench of the Tribunal in the case of *ACIL Ltd. Vs ACIT [2022] 194 ITD 708 (Del.Trib.)* and *Ishita Technologies Pvt.Ltd. vs DICT in ITA No.2789 of 2017 (Del.Trib.).* Further, reliance was placed upon the

judgement of the Hon'ble Supreme Court rendered in the case of *Diwan Enterprises vs CIT 246 ITR 571 (Del.); CIT vs Rampur Engineering CO.Ltd. 309 ITR 143(Del.) (FB)* and the decision of the Co-ordinate Bench of this Tribunal in the case of *ITO vs Budge Budge Co. Ltd. 100 ITD 387* in support of the contention that there was no proper satisfaction recorded by the AO. Further, reliance was placed on the judgement of Hon'ble Delhi High Court in the case of *CIT vs Globe Sales Corporation 196 CTR 187* and the judgement of Hon'ble Delhi High Court in the case of *CIT vs Arctic Investment (P) Ltd. 190 Taxman 157 (Del.).* To buttress the contention that the assessment and penalty proceedings are independent and distinct proceedings. It was further argued that the claim made in bonafide would not attract penalty. In support of this, reliance was placed upon the judgment of Hon'ble Supreme Court in the case of *CIT vs Reliance Petroproducts Pvt.ltd. 322 ITR 158* and the judgement of Hon'ble Delhi High Court in the case of *CIT vs Udaipur Hotels Ltd. 35 taxmann.com 207 (Del.).* It was further argued that claim of the assessee has been allowed in past by the Revenue itself. Therefore, it was submitted that in the light of the binding precedents, impugned penalty deserves to be deleted.

9. Admittedly, in the present case, it is evident from the notice passed u/s 271(1)(c) of the Act dated 22.03.2014 & 07.08.2018. The AO has not specified the charge under which limb of the provision, the penalty is required to be imposed. Under the identical facts, the Hon'ble Jurisdictional High Court in the case of *PCIT vs Sahara India Life Insurance Co. Ltd.* (supra) has held 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 vs*

Manjunatha Cotton & Ginning Factory [2013] 35 taxman 423/359 ITR 565 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 CIT v. SSA's Emerald Meadows [2016] 73 taxmann.com 241, 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. Similarly, the Hon'ble Karnataka High Court in the case of *CIT vs SSA's Emerald Meadows* (supra) had confirmed the deletion of penalty on the similar ground. The decision has also been followed by the Co-ordinate Benches of this Tribunal, in series of cases. Therefore, we hold that the penalty notices issued by the AO are contrary to the law laid down by the Hon'ble Delhi High Court and is hereby, quashed.

11. We are also in agreement to the submission of the assessee that if the assessee is able to prove its *bona fide* then in that event, no penalty could be levied. Moreover, Ld. Counsel for the assessee had also drew our attention to the fact that Ld.CIT(A) in assessee's own case for AY 2007-08 allowed the claim of the assessee. Similarly, for the AY 2008-09, also claim regarding donation was allowed and this decision of the Ld.CIT((A) was challenged before the Tribunal. However, the appeal of the Revenue was dismissed on account of low tax effect by following the CBDT Circular No.17/2009 dated 08.08.2019. Therefore, looking to the totality of the facts and in view of the above-mentioned

binding precedents, the impugned penalty is hereby deleted. Thus, grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 18th October, 2022.

Sd/-	***Sd/-***
(N.K.BILLAIYA)	**(KUL BHARAT)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI