

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “E”: NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 36/DEL/2021
[Assessment Year: 2009-10]**

Legend Realtors Pvt. Ltd., A-185, Suraj Mal Vihar, New Delhi-110092.	<u>Vs</u>	Income-tax Officer, Ward-15(2), New Delhi.
PAN- AAACL3616J		
APPELLANT		RESPONDENT
Appellant by	Sh. Abhinay Gupta, CA	
Respondent by	Sh. Jeetender Chand, Sr. DR	
Date of hearing	31.10.2022	
Date of pronouncement	31.10.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-32, New Delhi, dated 23.01.2020, pertaining to the assessment year 2009-10. The assessee has raised following grounds of appeal:

“1. *Ground No. 1*

1.1 *On the facts and in circumstances of the case and in law, the learned CIT(A) has erred in upholding the penalty order passed by the learned AO.*

2. *Ground No. 2*

2.1 *On the facts and circumstances of the case and in law, the learned CIT(A) has erred in not holding that the penalty order passed by the learned AO is bad in law and liable to be quashed.*

2.2 *On the facts and circumstances of the case and in law, the learned CIT(A) has erred in not holding that the Notices issued under 274 read with section 271(1)(c) are bad in law and liable to be quashed.*

2.3 *On the facts and circumstances of the case and in law, the learned CIT(A) has erred in upholding the penalty order passed by the learned AO without considering that the penalty has been charged on the wrong limb.*

3. *Ground No. 3*

3.1 *On the facts and circumstances of the case and in law, the learned CIT(A) has erred in upholding the penalty order passed by the learned AO without considering that the merits of the case were prima facie in favour of the Appellant.”*

2. Facts giving rise to the present appeal are that for the assessment year in question the Assessing Officer assessed the income of the assessee u/s 148/143(3) of the Income-tax Act, 1961(hereinafter referred to as “the Act”) at Rs. 4,21,65,840/- and initiated penalty proceedings separately. Thereafter, the Assessing Officer vide penalty order dated 21.03.2016 imposed penalty of Rs. 84,33,170/- u/s 271(1)(c) of the Act. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions sustained the penalty and against this the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee at the outset pointed out that the penalty imposed by the Assessing Authority is bad in law on account of the fact that the penalty notices dated 1.3.2013, 31.12.2015 and 5.2.2016 are contrary to the ratio laid down by the judgment of the Hon’ble Delhi High Court rendered in the case of Sahara India Life

Insurance Co. Ltd. (2019) (ITA 475 of 2019). Learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in the case of SSA'S Emerald Meadows (73 Taxmann.com 248). He submitted that under the identical facts the Tribunal following the judgment of the Jurisdictional High Court in the case of Sahara India Life Insurance Co. Ltd. (supra) has also deleted the penalty.

4. On the contrary, learned DR opposed the submissions and supported the orders of the authorities below. Learned DR submitted that under identical facts the Hon'ble Madra High Court in the case of Sundaram Finance Ltd. vs. ACIT (2018) 93 taxmann.com 250 has upheld the penalty order.

5. We have heard rival submissions and perused the material available on record. There is no dispute with regard to the fact that the Assessing Authority has failed to specify the charge under which he was proposing to levy the penalty. For the sake of clarity the penalty notice dated 1.3.2013 is reproduced as under:

“NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

*Income Tax Office,
Ward 4(3), New Delhi.*

*Penalty u/s 271(1)(c)
To
M/s Legend Realtors pvt. Ltd.,
A-185, Surajmal Vihar,
Delhi-110032.*

Whereas in the course of proceedings before me for the assessment year 2009-10 it appears to me that you:-

“have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961 dated.....

have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5.

You are hereby requested to appear before me at 11.30 AM on 18.03.2013 and show cause, why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271(1)(c)

*Sd/-
Assessing Officer”*

6. The Hon'ble Delhi High Court in the case of 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 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.”*

7. The judgment of the Hon'ble Delhi High Court has been followed by the various coordinate Benches of the Tribunal. Respectfully following the judgment of the Hon'ble Delhi High Court in the case of Sahara India Life Insurance Co. Ltd. (supra), we hold that the notice issued by the Assessing Authority did not specify under which limb of section 271(1)(c) of the Act, the notice has been issued, hence it is bad in law. Therefore, the penalty levied by the AO and sustained by the learned CIT(Appeals) on the basis of

invalid notice deserves to be deleted. Accordingly, the AO is hereby directed to delete the penalty. Grounds raised by the assessee are allowed.

9. Appeal of the assessee is allowed.

Order pronounced in open court on 31.10.2022.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER
MP

Copy forwarded to:

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

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI