

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.5706/Del./2019  
(ASSESSMENT YEAR : 2011-12)**

ACIT, Circle 7 (1),  
New Delhi.

vs. DLF Homes Kokapet Pvt. Ltd.,  
1-E, Naaz Cinema Complex,  
Jhandewalan Extn.,  
New Delhi – 110 055.

**(PAN : AACCK9921H)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.S. Singhvi, CA  
Shri Satyajeet Goel, CA  
REVENUE BY : Shri Yogesh Kumar Nayyar, Sr. DR

Date of Hearing : 01.11.2022  
Date of Order : 15.11.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the Revenue is directed against the order of the Id.

CIT (Appeals)-3, New Delhi for the assessment year 2011-12.

2. The grounds of appeal read as under :-

“On the facts and in the circumstances of the case and in law, the Id. CIT (A) has erred in deleting penalty of Rs.1,39,36,395/- levied by the AO u/s 271(1)(c) of the Act.”

3. Brief facts of the case are that in the assessment order, Assessing Officer treated the interest expenditure of Rs.4,19,54,977/- as capital in

nature and added back the same to the income of the assessee. Penalty under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') was also levied on the said addition. In doing so, AO relied upon the decision of Hon'ble Delhi High Court in the case of Zoom Communications Ltd. 327 ITR 51. AO concluded as under :-

“6. In view of these facts, I am satisfied that the assessee has furnished inaccurate particulars of its income with the intention to evade taxes, and is, therefore, liable for penalty u/s 271(1)(c) of the I.T. Act, 1961. Penalty of Rs.1,39,36,395/- is levied in accordance with the provisions of Section 271(1)(c) being the minimum penalty envisaged in the section as per following calculation.

7. From this, it is clear that the assessee company has concealed particulars of income to the extent of Rs.4,19,54,977/-. Accordingly, I hold the assessee in default under the provisions of section 271(1)(c) of the Act and impose a penalty @ 100% of the tax sought to be evaded.”

5. Against the above order, assessee filed an appeal before the Id. CIT(A). The specific ground raised before the Id. CIT (A) was that the penalty notice issued was defective as AO has not specified the charge in the notice whether the assessee has concealed income or furnished inaccurate particulars of income, therefore, penalty imposed by the AO needs to be deleted. It was categorically stated that in the penalty notice dated 28.03.2014, the AO has not struck off one of the limbs out of the concealment of income or furnishing of inaccurate particulars of income. It was stated that even in the penalty order, the charge on which penalty has been levied is not specified. That in para 6 of the penalty order, AO has mentioned that assessee has furnished inaccurate particulars of

income. Whereas in para7, it was stated that assessee company has concealed particulars of income. Assessee made reference to several case laws in this regard. Ld. CIT (A) found cogency in the submissions and noted the reference made to Hon'ble Karnataka High Court decision in the case of CIT vs. SSA's Emerald Meadows against which Hon'ble Supreme Court has dismissed the SLP filed by the Department. Hon'ble Karnataka High Court decision quoted read as under :-

"The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of COMMISSIONER OF INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion; no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed."

6. It was noted by ld. CIT (A) that the Department filed Special Leave Petition to challenge the judgment of Hon'ble Karnataka High Court and Hon'ble Supreme Court dismissed the same by observing that we do not find any merit in this petition. The special leave petition is accordingly dismissed. Ld. CIT (A) deleted the penalty on this count as well as on merits also by concluding as under :-

"4.3 In view of the above facts, it is clear that the AO has issued the penalty notice in a routine manner and as such the appellant was not made aware of the specific charge against him. Even the penalty order does not specify the charge on which penalty has been levied. It is observed from Para 6 of the penalty order that the AO has mentioned that the appellant

company has furnished inaccurate particulars of income and in Para 7, it is stated that the assessee company has concealed the particulars of income. Even on merits, it has been submitted that the appellant was awarded a housing project by the government of Andhra Pradesh and the work was suspended due to some litigation and as per the Accounting Standard (AS 16), the appellant suspended the capitalization of the interest and therefore, no addition was required to be made. The AR has quoted various judgments in its favour on this issue and has also relied upon the judgment of Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproduct Pvt. Ltd. 322 ITR 158. On the basis of the various arguments and contentions raised by the AR, facts of the case and keeping in view the various judgments of Apex Court and different High Courts/ITAT, I am of the opinion that it is not a fit case for levy of penalty as it cannot be said that the appellant has furnished inaccurate particulars of income or has concealed the particulars of income. Accordingly, the penalty levied by the AO is deleted and the grounds of appeal are allowed.”

7. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the records.

8. Ld. Counsel of the assessee referred to the defect in the notice and pleaded that the penalty is not sustainable on account of defective notice. He further submitted that on merits also, assessee has made correct claim as per AS-16 and mere rejection of the claim cannot lead to levy of penalty. In this regard, he referred to the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproduct Pvt. Ltd. 322 ITR 158, referred by Id. CIT (A).

9. Upon careful consideration, we note that it is undisputed that in the penalty notice, in this regard, AO has not specified the limb under which the notice was being served. It was not specified whether the charges are on account of concealment of income or furnishing of inaccurate particulars of income. In such circumstances, it has been held by higher

courts that the penalty is liable to be deleted. Reference in this regard is made to the decision of Hon'ble Karnataka High Court in the case of CIT vs. M/s. SSA's Emerald Meadows (supra). Also Full Bench of Hon'ble Bombay High Court in the case of Mr. Mohd. Farhan A. Shaikh vs. ACIT in ITA No.51 & 57 of 2012 dated 11.03.2021 has also held that no specification of charge in the penalty notice leads to same becoming void and penalty on that count is to be deleted. Hon'ble Court held as under :-

“Head Note only :

S.271(1)(c) : Penalty – Concealment – Non-striking off of the irrelevant part while issuing notice under section 271(1)(c) of the Income-tax Act, - Order is bad in law – Assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.”

Accordingly, we confirm the order of Id. CIT (A) and penalty is not sustainable as the omnibus notice suffers from the vice of vagueness. Since we have already quashed the penalty on the jurisdictional issue, the merits of the penalty levied is not being adjudicated being academic in nature.

10. In the result, the appeal filed by the Revenue stands dismissed.

**Order pronounced in the open court on this 15<sup>th</sup> day of November, 2022.**

**Sd/-  
(YOGESH KUMAR US)  
JUDICIAL MEMBER**

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

**Dated the 15<sup>th</sup> day of November, 2022  
TS**

Copy forwarded to:

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

AR, ITAT  
NEW DELHI.