

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA.No.26/Del./2019  
Assessment Year : 2014-15

Kalinga Cables and Conduits  
Company,  
H.No.81B, Road No.41,  
Punjabi Bagh,  
Delhi.

Vs. ACIT,  
Circle 41-(1),  
New Delhi.

PAN : AAGFK7011H

(Appellant)

(Respondent)

For Revenue : Shri Om Parkash, Sr. DR  
For Assessee : Shri Rajeev Sabharwal, FCA

Date of Hearing : 22.12.2022  
Date of Pronouncement : 04.01.2023

**ORDER**

This appeal filed by assessee is directed against the order of the  
CIT(A)-14, New Delhi, dated 06.11.2018 relating to the A.Y. 2014-15.

2. The grounds raised by the assessee read as under:-

*"1. That the Hon'ble CIT (A) has erred in confirming the penalty U/s 271(I)(b) of Rs. 62,197/- imposed by the learned ITO.*

*2. That the learned CIT(A) has passed the order in haste and without providing fair and reasonable opportunity to the appellant. Hence the order is bad in law and illegal.*

*3. That the learned CIT (A) had wrongly, illegally and without justification not considered the replies filed before him quantum addition was voluntarily offered by appellant during the*

*assessment proceedings u/s 143(3) on the ground that no penalty u/s 271(l)(c) be initiated.*

4. *That the learned CIT(A) has grossly erred in stating in the order that "the assessee in his written note filed has not made any submission to establish the nature of claim, but from a perusal of the assessment order and assessee's submission, it is appellant that the amount is in the nature of penalty for violation of excise laws. Such expenditure can never be said to have been incurred wholly and exclusively for the business purpose of the assessee. This fact was also not disclosed in the return of income and was detected during assessment proceedings. Therefore, it was also case of non disclosure of material facts which attracts explanation 1 to section 271(l)(c) of I. T. Act as well"*

5. *That the learned CIT (Appeals) has not considered the various grounds raised by the appellant before him and more so that the satisfaction has not been recorded in a proper manner by the learned ACIT and no show cause notice given below addition.*

6. *That the appellant craves leave to alter, amend, delete or add all or any ground before or at the time of hearing."*

3. By way of a separate application, the assessee also seeks to raise the following additional ground:-

"1. That in absence of any specific show cause notice, the levy of penalty is wholly misconceived and untenable.

1.1 That notice dated 15.12.2016 is highly vague inasmuch as they do not state as to whether assessee has either 'concealed' the particulars of income or furnished 'inaccurate' particulars of income therefore, such notices cannot be made a basis for holding that provisions contained in section 271(1)(c) of the Act."

4. The Id. AR submitted that the aforesaid grounds are legal and deserve to be admitted in view of the judgement of the Hon'ble Supreme Court in the case of *NTPC vs. CIT, 299 ITR 383 (SC)*. The Id. AR also placed reliance on

the judgement of the jurisdictional High Court of Delhi in the case of *DIT (E) vs. Ajay G. Piramal Foundation, 228 Taxman 332 (Del)* and submitted that the ground which can be adjudicated on the basis of the material available on record and goes to the root of the matter being legal, then, the additional ground of the assessee should be allowed to be raised when it is necessary to consider in the interest of justice.

5. Replying to the above, the Id. Sr. DR strongly opposed to the admission of additional grounds.

6. On careful consideration of the above, I find that by way of an additional grounds, as noted above, the assessee seek to raise a legal issue that in absence of any specific show cause notice, the levy of penalty u/s 271(1)(c) of the Act is wholly misconceived and intangible, therefore, such notice cannot be made basis for holding that penalty u/s 271(1)(c) of the Act has to be imposed on the assessee.

7. The additional grounds raised by the assessee are legal in nature which goes to the root of the matter and the same is in consonance with the order of the Hon'ble Supreme Court in the case of *CIT vs. SSA's Emerald Meadows, 242 Taxman 180* and various other judgements of the Hon'ble jurisdictional High Court of Delhi including the judgement in the case of *PCIT vs. Sahara India Life Insurance Company Ltd., 432 ITR 84 (Del)*. In view of the above, the additional grounds raised by the assessee are admitted by

respectfully following the proposition rendered by the Hon'ble Supreme Court in the case of *NTPC vs. CIT (supra)*. Apropos the additional grounds of the assessee, the Id. AR drew our attention to page 20 of the assessee's paper book wherein copy of the notice dated 15.02.2016 issued by the AO u/s 274 r.w. section 271 of the Act has been placed wherein the AO has mentioned both the allegations simultaneously, i.e., the assessee has concealed the particulars of income and have furnished inaccurate particulars of such income and submitted that in view of the judgement of the Hon'ble Supreme Court in the case of *SSA's Emerald Meadows (supra)* which has been followed by the Hon'ble jurisdictional High Court in the case of *PCIT vs. Sahara India Life Insurance Co. Ltd. (supra)* this action of the AO is bad in law. The relevant para 21 of the order of the Hon'ble jurisdictional High Court reads as follows:-

"21. The Respondent had challenged the upholding of the penalty imposed under Section 271(I)(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 359 565 (Kar)* and observed that the notice issued by the Assessing Officer 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 vs. SSA's Emerald Meadows (2016) 73 Taxman.com 241 (Kar.)*, the appeal against which was dismissed by the Hon'ble Supreme Court of India in SLP No. 11485 of 2016 by order dated 5th August, 2016."

8. In view of the above, I am compelled to hold that the notice issued by the AO would be had in law if it did not specify under which limb of section

271(1)(c) of the Act the penalty proceedings had been initiated under, i.e., whether for concealment of particulars of income or for furnishing inaccurate particulars of income. Therefore, the penalty proceedings itself becoming vitiated and bad in law such proceedings initiated without application of mind cannot be held as sustainable and the consequent penalty imposed by the AO and confirmed by the Id.CIT(A) does not survive.

9. In view of the above, respectfully following the proposition rendered by the Hon'ble Supreme Court in the case of *SSA's Emerald Meadows (supra)* and in the case of *PCIT vs. Sahara India Life Insurance Co. Ltd. (supra)*, the penalty is cancelled and the AO is directed to delete the penalty since the initiation of penalty proceedings have been held as bad in law. Since we have disposed of the appeal on legal grounds, the grounds of the assessee on merits have become academic, so, the same are not being adjudicated upon.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 04.01.2023.

Sd/-

[CHANDRA MOHAN GARG]  
JUDICIAL MEMBER

Delhi, Dated, 04<sup>th</sup> January, 2023

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Copy to :

1. The appellant
2. The respondent
3. Ld. CIT(A) concerned
4. CIT concerned
5. DR ITAT "A" Bench, Delhi
6. Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,  
Delhi.