

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA.No.4998/Del/2019  
Assessment Year : 2015-16

ITO,  
Ward-23(4),  
New Delhi.

Vs. Silvertone Infrastructure Pvt. Ltd.,  
C-24, G.K. Enclave, Part-1,  
New Delhi.

PAN: AAICS7804H

(Appellant)

(Respondent)

For Revenue : Shri Gurpreet Shah Singh, Sr. DR  
For Assessee : Shri Mukesh Jain, CA &  
Shri Samyak Jain, Advocate

Date of Hearing : 09.01.2023  
Date of Pronouncement : 11.01.2023

**ORDER**

**PER SHAMIM YAHYA, A.M.:**

This appeal by the Revenue is directed against the Order of the  
Ld. CIT(A)-8, New Delhi, dated 14.03.2019 and pertains to A.Y. 2015-16.

2. The grounds of appeal read as under:-

"1. Whether on the facts and circumstances of the case and in law the Id.CIT(A) erred in deleting the penalty imposed u/s 271(1)(c) of the Act on account of furnishing of inaccurate particulars of income when the same was admitted by the assessee during the course of assessment proceedings.

2. Whether on the facts and circumstances of the case and in law the Id.CIT(A) erred in deleting the penalty imposed u/s 271(1)(c) of the Act on the basis of the financial statements only and by ignoring the claims made by the assessee regarding losses to be carried forward in the returns of income filed for AY 2015-16 and subsequent years i.e., AY 2016-17 and 2017-18.

3. The appellant craves leave to add, alter or amend any of the ground(s) of appeal before or during the course of hearing of the appeal.”

3. In this case, penalty was levied u/s 271(1)(c) of the Act amounting to Rs.55,85,200/-. Upon the assessee's appeal, the Id.CIT(A) allowed the assessee's appeal on two counts: firstly he accepted the assessee's plea that relevant limb in the penalty notice has not been ticked off, hence, on jurisdictional aspect, the penalty is not sustainable. In this regard, the order of the Id.CIT(A) reads as under:-

*"4.1 The Ld. AR of appellant argued that while initiating the penalty proceeding u/s 271(1)(c) of the Act, the AO did not strike off inappropriate portion in the notice issued u/s 274 of the Act on 27/11/2017. He further argued that there must be a clear finding about the charge of penalty it is incumbent upon the AO to state whether penalty was levied for concealment of income or for furnishing inaccurate particulars of income. Even if the penalty proceeding are in the nature of civil liability, in fact, it is penal in nature. The person who is accused in the conditions of mentioned in section 271 should be known about the grounds on which they intend imposing penalty on him as the section 274 may it clear that the assessee has a right to contest such proceedings. The practice of the Department sending a printing form where all the grounds mention in section 271 are mentioned would not satisfy requirement of law when the consequences on the assessee not rebutting initial presumption in serious nature and assessee had to pay penalty from 100% to 300% of tax liability. As the said provisions have to be held to be strictly construed, notice issued u/s 271 should satisfy the grounds which assessee has to meet specifically. Otherwise, principle of natural justice is offended if show cause notice is vague. Further in light of the ratio laid down*

*by Hon'ble Apex Court in case of CIT Vs SSA's Emerald Meadows (SC) I.T.A. No. 380 of 2015 in which it was held that omission by the AO to explicitly specify in the penalty notice as to whether penalty notice proceedings are being initiated for furnishing of inaccurate particulars or for concealment of income makes the penalty order liable for cancellation as well as by Bombay High court in case of CIT Vs. Shri Samson Perinchery ITA No. 1154 dated 05.01.2017 and by ITAT Delhi in case of Alcatel-Lucent India Ltd. Vs. ACIT (ITAT Delhi) ITA No. 447/Del/2014 dated 26.04.2018 & Ipsita Malik, New Delhi vs ACIT, New Delhi, ITA No. 5183/Del/2016, where in it was held that failure by AO to specify in section 274 notice whether penalty is being initiated for 'furnishing of inaccurate particulars of income or concealment of income' is fatal. It reflects non application of mind by AO & renders the levy of penalty invalid. Hence penalty cannot be imposed u/s 271(l)(c) of the Act."*

3.1 Holding the penalty so levied as devoid of jurisdiction and invalid, the Id.CIT(A) further considered the merits of the case and decided the issue in favour of the assessee. Against this order, the Revenue is in appeal before us.

4. We have heard both the parties and perused the record. We note that the Id.CIT(A) has, *inter alia*, deleted the penalty on the ground that the AO did not strike off the appropriate portion of the notice specifying the charge of the penalty. This fact has not been disputed by the Revenue. In such circumstances when the relevant limb of penalty notice is not ticked specifying the charge of the assessee, it has been held in various case laws as referred above in Id.CIT(A)'s order, the penalty notice is invalid. Hence, on this count only, we do not find any infirmity in the order of the CIT(A). We

hold that the Id.CIT(A) is correct in holding that in such circumstances, the penalty levied is not sustainable.

5. As regards the merits of the case, we find that the same no more requires any adjudication inasmuch as we have held that for not ticking off the relevant limb, the penalty notice is invalid, hence, the penalty levied by virtue of that invalid notice is also liable to be cancelled.

6. In the result, this appeal by the Revenue stands dismissed.

Order pronounced in the open court on 11.01.2023.

Sd/-

Sd/-

[ASTHA CHANDRA]  
JUDICIAL MEMBER

[SHAMIM YAHYA]  
ACCOUNTANT MEMBER

Dated, 11<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.