

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.1279/DEL/2019

Assessment Year: 2007-08

Smt. Saraswati Devi Goyal Flat No.4, R. R. Apartment 3-4, Manglapuri, Mehrauli New Delhi-110030 PAN No.AEIPG8121L	Vs	DCIT New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1282/DEL/2019

Assessment Year: 2005-06

M/s. Gobind Kumar Goyal Flat No.4, R. R. Apartment, 3-4, Manglapuri, Mehrauli, New Delhi PAN No.ALIPK0103F	Vs	ACIT New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1283/DEL/2019

Assessment Year: 2007-08

M/s. Gobind Kumar Goyal Flat No.4, R. R. Apartment, 3-4, Manglapuri, Mehrauli, New Delhi PAN No.ALIPK0103F	Vs	DCIT New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1280/DEL/2019**Assessment Year: 2005-06**

Smt. Sarita Devi Goyal Flat No. 4, R. R. Apartment 3-4, Manglapuri, Mehrauli, New Delhi-110030	Vs	DCIT New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1281/DEL/2019**Assessment Year: 2008-09**

Smt. Sarita Devi Goyal Flat No. 4, R. R. Apartment 3-4, Manglapuri, Mehrauli, New Delhi-110030 PAN No.AEIPG8122K	Vs	ACIT New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.2959/DEL/2019**Assessment Year: 2007-08**

DCIT Central Circle-14 New Delhi	Vs	Gobind Kumar Goyal, Flat No.4, R. R. Apartment, 3-4, Manglapuri, Mehrauli, Delhi0110030 PAN No.ALIPK0103F
(APPELLANT)		(RESPONDENT)

ITA No.2932/DEL/2019**Assessment Year: 2008-09**

DCIT Central Circle-14 New Delhi	Vs	Gobind Kumar Goyal, Flat No.4, R. R. Apartment, 3-4, Manglapuri, Mehrauli, Delhi0110030 PAN No.ALIPK0103F
(APPELLANT)		(RESPONDENT)

ITA No.1284/DEL/2019**Assessment Year: 2008-09**

Gobind Kumar Goyal, Flat No.4, R. R. Apartment, 3-4, Manglapuri, Mehrauli, Delhi-110030 PAN No.ALIPK0103F	Vs	DCIT Central Circle -14 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1432/DEL/2019**Assessment Year: 2007-08**

Nageshwar Realtors (P) Ltd. Flat No.4, R R. Apartments, 3-4, Manglapuri, Mehrauli PAN No.AACCN1331N	Vs	DCIT Central Circle -14 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1092/DEL/2019**Assessment Year: 2006-07**

Om Shiv Buildtech Pvt. Ltd. Flat No.4, R. R. Apartment, 3-4, Manglapuri, Mehrauli, Delhi-110030 PAN No.AAACO7989B	Vs	DCIT Central Circle – 14, New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1427/DEL/2019**Assessment Year: 2007-08**

Om Shiv Buildtech Pvt. Ltd. Flat No.4, R. R. Apartment, 3-4, Manglapuri, Mehrauli, Delhi-110030 PAN No.AAACO7989B	Vs	DCIT Central Circle – 14, New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.2935/DEL/2019**Assessment Year: 2007-08**

DCIT Central Circle – 14, New Delhi	Vs	Om Shiv Buildtech Pvt. Ltd., Flat No.4, R. R. Apartment, 3-4, Manglapuri, Mehrauli, Delhi-110030 PAN No.AAACO7989B
(APPELLANT)		(RESPONDENT)

ITA No.1428/DEL/2019**Assessment Year: 2008-09**

Sh. Pradeep Kumar Aggarwal 472, Block-C, Sushant Lok-I, Gurgaon Haryana PAN No.ACTPA6960E	Vs	DCIT Central Circle – 14, New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1439/DEL/2019**Assessment Year: 2005-06**

Smt. Saraswati Devi Goyal Flat No.4, R. R. Apartment 3-4, Manglapuri, Mehrauli New Delhi-110030 PAN No.AEIPG8121L	Vs	DCIT Central Circle-14 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1440/DEL/2019**Assessment Year: 2008-09**

Smt. Saraswati Goyal Flat No.4, R. R. Apartment 3-4, Manglapuri, Mehrauli New Delhi-110030 PAN No.AEIPG8121L	Vs	DCIT Central Circle-14 New Delhi
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(APPELLANT)		(RESPONDENT)
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ITA No.1437/DEL/2019

Assessment Year: 2007-08

Shine Star Buildcom Pvt. Ltd. Flat No. 4, R. R. Apartment 3-4, Manglapuri, Mehrauli New Delhi PAN No.AAICS5795D	Vs	DCIT Central Circle-14 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1888/DEL/2019

Assessment Year: 2007-08

DCIT Central Circle -14 New Delhi	Vs	Shine Star Buildcom Pvt. Ltd. Flat No. 4, R. R. Apartment 3-4, Manglapuri, Mehrauli New Delhi PAN No.AAICS5795D
(APPELLANT)		(RESPONDENT)

ITA No.1438/DEL/2019

Assessment Year: 2008-09

Shine Star Buildcom Pvt. Ltd. Flat No. 4, R. R. Apartment	Vs	DCIT Central Circle -14 New Delhi
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3-4, Manglapuri, Mehrauli New Delhi PAN No.AAICS5795D		
(APPELLANT)		(RESPONDENT)

ITA No.1885/DEL/2019**Assessment Year: 2008-09**

DCIT Central Circle -14 New Delhi	Vs	Shine Star Buildcom Pvt. Ltd. Flat No. 4, R. R. Apartment 3-4, Manglapuri, Mehrauli New Delhi PAN No.AAICS5795D
(APPELLANT)		(RESPONDENT)

ITA No.1435/DEL/2019**Assessment Year: 2007-08**

Shivganesh Builders Pvt. Ltd. Flat No. 4, R. R. Apartment, 3-4 Manglapuri, Mehrauli New Delhi-110030 PAN No.AAICS5796A	Vs	DCIT Central Circle -14 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1887/DEL/2019**Assessment Year: 2007-08**

DCIT	Vs	Shivganesh Builders Pvt. Ltd. Flat No. 4, R. R. Apartment, 3-4 Manglapuri,
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Central Circle – 14 New Delhi		Mehrauli New Delhi-110030 PAN No.AAICS5796A
(APPELLANT)		(RESPONDENT)

ITA No.1436/DEL/2019**Assessment Year: 2008-09**

Shivganesh Builders Pvt. Ltd. Flat No. 4, R. R. Apartment, 3-4 Manglapuri, Mehrauli New Delhi-110030 PAN No.AAICS5796A	Vs	DCIT Central Circle – 14 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1886/DEL/2019**Assessment Year: 2007-08**

DCIT Central Circle – 14 New Delhi	Vs	Saraswati Devi Goyal Flat No.4, R . R Apartment, Manglapuri Mehrauli New Delhi PAN No.AEIPG8121L
(APPELLANT)		(RESPONDENT)

ITA No.1434/DEL/2019**Assessment Year: 2007-08**

Witness Construction (P) Ltd. Flat No.4, R. R. Apartment, 3-4 Manglapuri,	Vs	DCIT Central Circle – 14
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Mehrauli, New Delhi-110030 PAN No.AAECM0199B		New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.2936/DEL/2019**Assessment Year: 2007-08**

DCIT Central Circle – 14 New Delhi	Vs	Witness Construction (P) Ltd. Flat No.4, R. R. Apartment, 3-4 Manglapuri, Mehrauli, New Delhi- 110030 PAN No.AAECM0199B
(APPELLANT)		(RESPONDENT)

ITA No.1093/DEL/2019**Assessment Year: 2008-09**

Witness Construction (P) Ltd. Flat No.4, R. R. Apartment, 3-4 Manglapuri, Mehrauli, New Delhi-110030 PAN No.AAECM0199B	Vs	DCIT Central Circle – 14 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1091/DEL/2019**Assessment Year: 2007-08**

M/s. Shivnandan Buildcom Pvt. Ltd. Flat No.4, R.R. Apartment 3-4, Manglapuri, Mehrauli	Vs	DCIT Central Circle – 14 New Delhi
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New Delhi-110030		
PAN No. AAKCS1698B		
(APPELLANT)		(RESPONDENT)

ITA No.1564/DEL/2019**Assessment Year: 2005-06**

Sh. Gopal Kumar Goyal	Vs	DCIT
Flat No.4, R. R. Apartment, 3 & 4 Manglapuri, Mehrauli, New Delhi		Central Circle-14
PAN No.AEFPG8370J		New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1920/DEL/2019**Assessment Year: 2005-06**

DCIT	Vs	Sh. Gopal Kumar Goyal
Central Circle-14		Flat No.4, R. R. Apartment, 3 & 4 Manglapuri, Mehrauli, New Delhi
New Delhi		PAN No.AEFPG8370J
(APPELLANT)		(RESPONDENT)

ITA No.1921/DEL/2019**Assessment Year: 2006-07**

DCIT	Vs	Sh. Gopal Kumar Goyal
Central Circle-14		Flat No.4, R. R. Apartment, 3 & 4 Manglapuri,
New Delhi		

		Mehrauli, New Delhi PAN No.AEFPG8370J
(APPELLANT)		(RESPONDENT)

ITA No.1476/DEL/2019**Assessment Year: 2007-08**

Sh. Gopal Kumar Goyal Flat No.4, R. R. Apartment, 3 & 4 Manglapuri, Mehrauli, New Delhi PAN No.AEFPG8370J	Vs	DCIT Central Circle-14 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1889/DEL/2019**Assessment Year: 2007-08**

DCIT Central Circle-14 New Delhi	Vs	Sh. Gopal Kumar Goyal Flat No.4, R. R. Apartment, 3 & 4 Manglapuri, Mehrauli, New Delhi PAN No.AEFPG8370J
(APPELLANT)		(RESPONDENT)

ITA No.2934/DEL/2019**Assessment Year: 2008-09**

DCIT Central Circle-14 New Delhi	Vs	MDLR Hotels Pvt. Ltd. Flat No.4, R. R. Apartments, 3-4, Manglapuri, Mehrauli,
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		New Delhi PAN No.AAECM5649L
(APPELLANT)		(RESPONDENT)

ITA No.1431/DEL/2019**Assessment Year: 2008-09**

DCIT Central Circle-14 New Delhi	Vs	MDLR Hotels Pvt. Ltd. Flat No.4, R. R. Apartments, 3-4, Manglapuri, Mehrauli, New Delhi PAN No.AAECM5649L
(APPELLANT)		(RESPONDENT)

ITA No.1091/DEL/2019**Assessment Year: 2007-08**

Shivnandan Buildcom Pvt. Ltd. Flat No.4, R. R. Apartment, 3-4 Manglapuri, Mehrauli, New Delhi PAN No.AAKCS1698B	Vs	DCIT Central Circle-14 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1441/DEL/2019**Assessment Year: 2007-08**

M /s. King Buildcom (P) Ltd Flat No.4, R. R. Apartment, 3-4, Manglapuri, Mehrauli,	Vs	DCIT Central Circle-14 New Delhi
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New Delhi PAN No.AACCK4283G		
(APPELLANT)		(RESPONDENT)

ITA No.2930/DEL/2019**Assessment Year: 2007-08**

DCIT Central Circle-14 New Delhi	Vs	M /s. King Buildcom (P) Ltd Flat No.4, R. R. Apartment, 3-4, Manglapuri, Mehrauli, New Delhi PAN No.AACCK4283G
(APPELLANT)		(RESPONDENT)

ITA No.1442/DEL/2019**Assessment Year: 2008-09**

M /s. King Buildcom (P) Ltd Flat No.4, R. R. Apartment, 3-4, Manglapuri, Mehrauli, New Delhi PAN No.AACCK4283G	Vs	DCIT Central Circle-14 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1433/DEL/2019**Assessment Year: 2007-08**

Witness Builders (P) Ltd.	Vs	DCIT
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Flat No.4, R. R. Apartment, 3-4, Manglapuri, Mehrauli, New Delhi PAN No.AAACW5452H		Central Circle-14 New Delhi
(APPELLANT)		(RESPONDENT)

(Applicant)

(Respondent)

Assessee By : Shri Gautam Jain, Adv
Shri Lalit Mohan, CA
Shri Ramesh Jaiswal, CA

Department By : Shri T.P. Kipgen, CIT- DR

Date of Hearing : 01.02.2023
Date of Pronouncement : 08.02.2023

ORDER

PER BENCH:-

The above captioned bunch of 38 appeals by the assessee and Revenue challenge the levy of penalty/deletion of penalty u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

2. The representatives of both the sides were heard at length, the case records carefully perused. Relevant documentary evidences brought on record carefully perused in light of Rule 18(6) of ITAT Rules.

3. Since common issues are involved in all these appeals, they were heard together and are disposed of by a common order for the sake of convenience and brevity.

4. Challenge by the assessee relates to the notices u/s 274/271 of the Act issued and served upon the assesseees which are proforma notices wherein it is not clear whether penalty proceedings have been initiated for concealing particulars of income or for furnishing of inaccurate particulars of income.

5. At the very outset, the ld. counsel for the assessee drew our attention to the impugned notices exhibited at pages 26 to 51 of the compilation and pointed out that the notices are vague and are not decisive in respect of the charge levelled against the assessee - whether the penalty is being levied for furnishing inaccurate particulars of income or for concealment of income.

6. On the other hand, the ld. DR relied upon the orders of the authorities below and vehemently contended that there is no mandate in the provisions of Section 271(1)(c) rws 274 of the Act as to the issue of notice to the appellant in any format and consequently, the non-striking out of the irrelevant limb (namely concealment of the particulars of income or furnishing of inaccurate particulars of income) in the said notice, cannot itself vitiate the initiation of the penalty proceedings. The issue of notice in the preprinted format is to call the tax payer to avail the opportunity of being heard granted. In his written submissions, the ld. DR relied upon various judicial decisions.

7. The ld. DR further contended that absence of any further correspondence from the assessee regarding the lack of clarity in the penalty notice and the reasons for initiation of the said penalty, clearly confirms that the appellant and the Assessing Officer are on the same page.

8. The ld. DR was of the view that the appellant has challenged that in the penalty notice the Assessing Officer has to specify whether the proceedings are initiated for concealment of income or for filing of inaccurate particulars of income. The plea of the appellant is that the

penalty has been levied in pursuance of a vague notice without specific charge for imposing of penalty u/s 271(l)(c) of the Act whether the assessee has concealed particulars of income or whether the assessee has furnished inaccurate of particulars of income. For this the appellant has relied upon many decisions. All these decisions are based upon the old finding of the Hon'ble Courts that penalty u/s 271(l)(c) of the Act is a quasi-criminal proceeding which is not held good by the Hon'ble Supreme Court subsequently.

9. We have heard the rival contentions and have given thoughtful consideration to the orders of the authorities below. We have carefully perused each and every notice and find the Assessing Officer himself was not aware/certain as to whether he is issuing notice to initiate penalty proceedings either for concealment of income or for furnishing inaccurate particulars of income.

10. This issue has been duly considered and decided by the Hon'ble High Court of Delhi in the case of Pr. CIT vs. Sahara India Life Insurance Company Ltd. ITA 475 of 2019, while deciding the identical issue 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."

11. Similar view was taken by the Hon'ble High Court of Karnataka in the case of SSA Emerald Meadows ITA No. 380 of 2015. The relevant findings of the judgement read as under:

"Notice issued by the Assessing Officer u/s 274 r.w.s 271(1)(c) of 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 issue was decided in favour of the assessee."

12. A SLP of the revenue against this judgement of the Hon'ble High Court of Karnataka was dismissed by the Hon'ble Supreme Court in 73 taxmann.com 248.

13. We are of the considered view that when the notices issued by the AO are bad in law being vague and ambiguous having not specified under which limb of section 271(1)(c) of the Act, the penalty proceedings initiated u/s 271(1)(c) are not sustainable.

14. The decisions relied upon by the Id. DR are misplaced and the decision of the Hon'ble Jurisdictional High Court [supra] is directly on the point.

15. In view of what has been discussed above, following the decisions rendered by Hon'ble High Courts discussed in the preceding paras and without entering into the other aspects of the case, we are of the considered view that when the very initiation of the penalty by way of issuance of vague and ambiguous notices u/s 271(1)(c) read with section 274 of the Act without specifically charging the assessee if he has concealed the particulars of income or has furnished inaccurate particulars of such income, subsequent

penalty proceedings are not sustainable, hence penalty levied by the AO and confirmed by the Id. CIT (A) is not sustainable and as such, the appeals filed by the assessee are allowed and those of the Revenue stand dismissed.

15. Respectfully following the decisions [supra] we direct the Assessing Officer to delete the penalty levied u/s 271(1)(c) of the Act.

16. For the sake of completeness, we have annulled the impugned assessment orders by way of a separate order in a batch of 111 appeals, thereby removing the foundation for levy of penalty u/s 271(1)(c) of the Act. On that count also, the impugned penalty is liable to be deleted.

17. In the result the appeals of the assessee are allowed and those of the Revenue stand dismissed.

The order is pronounced in the open court on 08.02.2023.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 08th February, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	