

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

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

**ITA No. 47/DEL/2020
[Assessment Year: 2015-16]**

DCIT, Circle-23(1) New Delhi.	<u>Vs</u>	Shawanotel India Pvt. Ltd., 252, New Mangla Puri, New Delhi-110030. PAN- AABCS7331N
APPELLANT		RESPONDENT
Assessee represented by	None.	
Department represented by	Ms. Maninder Kaur, Sr. DR	
Date of hearing	05.01.2023	
Date of pronouncement	14.02.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the Revenue, is directed against the order of the learned CIT(Appeals)-8, New Delhi dated 23.10.2019 pertaining to the assessment year 2015-16.

The Revenue has raised following grounds of appeal:

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty of Rs. 1,39,31,919/- and deciding the appeal of the assessee in its favour despite of the fact that the assessee has filed incorrect MAT income and AO revised the MAT income in the assessment proceedings and found that the assessee by filing incorrect computation of income on MAT u/s 115JB of the Income Tax Act, 1961 wherein addition of Rs. 6,96,32,612/- was made by AO on which tax of Rs. 1,39,31,919/- was evaded by the assessee company.

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not relying on penalty notice u/s 274 r.w.s. 271(l)(c) of the Income Tax Act, 1961 dated 11.12.2017 issued to the assessee wherein it has been clearly mentioned that “the assessee” has furnished inaccurate particulars of such income*

3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not relying on penalty order wherein it has clearly mentioned that penalty of Rs. 1,39,31,919/- was imposed on furnishing inaccurate particulars of income which was admitted by the assessee itself in reply to the penalty notice vide letter received in this office on 18.06.2018.*

4. *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.*

2. The only effective ground in this appeal is against deletion of penalty of Rs. 1,39,31,919/-. The facts giving rise to the present appeal are that in this case the assessment u/s 143(3) of the income-tax Act, 1961, hereinafter referred to as the “Act” was completed on 11.12.2017, thereby computing income of Rs. 6,88,41,521/- u/s 115JB of the Act. The Assessing Officer had also initiated penalty proceedings and imposed a penalty of Rs. 1,39,31,919/- vide order dated 25.06.2018. Aggrieved by this the assessee carried the matter before the learned CIT(Appeals), who after considering the submissions and examining the facts of the case deleted the penalty. Now aggrieved by this the Revenue is in appeal before this Tribunal.

3. At the time of hearing no one attended the proceedings on behalf of the assessee. It is transpired from the record that since 29.06.2022 no one is attending the proceedings on behalf of the assessee. Notice of hearing sent to the assessee at the address furnished in form no. 36 have been returned unserved with the postal remarks “left” or “No such firm

at this address". Therefore, the appeal was taken up for hearing in the absence of the assessee and is being decided after hearing the learned DR and on the basis of material available on record.

4. Learned DR submitted that the learned CIT(Appeals) was not justified in deleting the addition. He submitted that the learned CIT(Appeals) has deleted the penalty purely on the basis of technical ground. However, the fact of the matter is that a notice was issued to the assessee and the assessee participated in the proceedings.

5. We have heard learned DR and gone through the material available on record. We find that the learned CIT(Appeals) has given a finding of fact by observing as under:

"Decision: I have gone through the assessment order and she.', cause notice issued u/s 271(l)(c). The AO initiated penalty proceedings - the assessment order and issued show cause notice u/s 271(l)(c) for bot" concealment of income and furnishing of inaccurate particulars of income The AO has not specified which limb of Section 271(l)(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. B. now it is established law, that penalty cannot be initiated for both the charges as concealment of income and furnishing of inaccurate particulars of income are two distinct charges. The assessee must know which case it has to meet otherwise it is a violation of principles of natural justice.

In this regard, it may be relevant to refer to the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory reported in (2013) 35 taxmann.com 250 (Kar.) at Para 63 which inter alia held that:-

Para 63 In the light of what is stated above, what emerges is as under:

(p) Notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(l)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income (q) Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law.

(r) The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.

(s) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.

(t) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings."

5.4 The above order of Hon'ble Karnataka High Court is accepted by the Hon'ble Delhi High Court in *Pr. Comm. Of Income Tax v M/s Sahara India Life Insurance Co. Ltd* [ITA 475/2019, ITA 426/2019, ITA 427/2019 & ITA 429/2019][Delhi HC](Dated 02.08.2019) while observing 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.

22. On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises.

5.5 I find that the AO has not mentioned either in notice u/s 271(1)(c) or in assessment order as to whether it is a case of concealment of income or furnishing of inaccurate particulars of income. In view of the above findings of Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory and Delhi High Court in *Pr. Comm. Of Income Tax v M/s Sahara India Life Insurance Co. Ltd*, the penalty order is not sustainable in the eyes of the law."

6. The Revenue has not rebutted the finding of the learned CIT(Appeals). In the absence of specific rebuttal, supported by any evidence, we do not see any reason to disturb the finding of the learned CIT(Appeals), deleting the penalty in question, same is hereby affirmed. Grounds of appeal taken by the Revenue are rejected.

7. Appeal of the Revenue is dismissed.

Order pronounced in open court on 14th February, 2023.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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