

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

**ITA No.6068/Del./2019  
(ASSESSMENT YEAR : 2009-10)**

Sunil Bagga,  
104, Sainik Vihar Pitampura,  
Delhi – 110 034.

vs.

ITO, Ward 40 (3),  
New Delhi.

**(PAN : AHWPB9538M)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : None  
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 07.03.2023  
Date of Order : 13.03.2023

**ORDER**

This appeal by the assessee is directed against the order of Id. CIT (Appeals)-14, New Delhi dated 17.06.2019 pertaining to Assessment Year 2009-10.

2. The grounds of appeal taken by the assessee read as under :-

“1. On the facts and in law, the Ld. CIT (A) grossly erred in sustaining the penalty of Rs.7,18,790/- imposed by the Assessing Officer u/s 271(1)(c) of the I.T. Act, 1961.

2. On the facts and in law, the Ld. CIT (A) did not allow proper opportunity to the appellant and passed the order in haste.”

3. In this case, in the assessment order, Assessing Officer added Rs.21,14,710/- on account of unexplained cash credits deposited in the bank. Penalty proceedings were also initiated on this. Before the Id. CIT(A), assessee has taken a ground that in the notice under section 274 r.w.s. 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'), there is no indication that the penalty is initiated for concealment of income or furnishing of inaccurate particulars of income. In this regard, assessee placed reliance on the decision of CIT vs. SSA Emerald Meadows and CIT vs. Manjunath Cotton Ginning Factory. Ld. CIT (A) was not convinced and opined that these decisions are not applicable and hence, he confirmed the levy of penalty.

4. Against this order, assessee is in appeal before me. I have heard the Id. DR for the Revenue and perused the records. None appeared on behalf of the assessee despite notice.

5. I find that non-specification of the limb of notice of penalty is a fatal error and the penalty order on this count is liable to be quashed. This has been so held by various Hon'ble High Courts and this view was also recently reiterated by Hon'ble Bombay High Court (Full Bench at Goa) in the case of Mr. Mohd. Farhan A. Shaikh v. ACIT in Tax Appeal No. 51 and 57 of 2012 dated 11.03.2021. Accordingly, since, in the present case also, the notice of penalty does not specify the limb and,

therefore, notice is defective and penalty levied on this defective notice is quashed. Hence, I set aside the orders of the authorities below and direct to delete the penalty.

6. In the result, assessee's appeal stands allowed.

**Order pronounced in the open court on this 13<sup>th</sup> day of March, 2023.**

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

**Dated the 13<sup>th</sup> day of March, 2023  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-14, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**