

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 2226/DEL/2023
Assessment Year: 2012-13**

H.B. Manufacturing Industries Pvt. Ltd., 25/33, FF, East Patel Nagar, New Delhi-110008.	<u>Vs</u>	ACIT, Circle-10(1), New Delhi.
PAN- AABCH1769F		
APPELLANT		RESPONDENT
Assessee represented by	Sh.Pradeep Kaushik, Adv.	
Department represented by	Sh. Baldev Singh Negi, Sr. DR	
Date of hearing	01.11.2023	
Date of pronouncement	06.11.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 14.06.2023, pertaining to the assessment year 2012-13, confirming the penalty levied by the Assessing Authority u/s 271(1)(c) of the Income-tax Act, 1961. The assessee has raised following grounds of appeal:

- “1. That the orders passed by the Assessing Officer and Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) are bad in law and are void ab initio.
2. That on the facts and circumstances of the case and in law, the CIT(A)

erred in confirming the penalty of Rs. 1,74,000/- imposed by the Assessing Officer u/s 271(1)(c) of the IT Act, 1961.

2.1 That the CIT(A) erred in confirming penalty imposed u/s 271(1)(c) despite the fact that the AO while initiating and imposing the penalty u/s 271(1)(c) has not specified against which default for the (i) concealment of particulars of income or for (ii) furnishing of inaccurate particulars of income.

2.2 That the show cause notice u/s 271(1)(c) of the Act, 1961 are fatally defective for not specifying the charge as to whether for concealment of income or for furnishing inaccurate particulars of income, making the initiation as well as whole proceedings invalid and unsustainable in law.

3. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing.”

2. The only effective ground in this appeal is against confirming the penalty of Rs. 1,74,000/- imposed by the AO u/s 271(1)(c) of the Act, 1961 (the “Act”).

3. Facts of the case, in brief, are that in this case assessee filed its return of income on 21.9.2012 at a loss of Rs. 3,73,208/-. Thereafter the case was reopened and assessment u/s 143(3) read with section 147 of the Act was framed assessing the total income at Rs. 21,67,290/-. The AO while framed the assessment made addition of Rs. 25,00,000/- u/s 68 of the Act and also initiated penalty proceedings u/s 271(1)(c) of the Act separately. Thereafter the AO issued notice dated 6.12.2019 calling upon the assessee as to why the penalty on the impugned addition should not be imposed. In response thereto the assessee filed its replies. However, those replies were not accepted by the Assessing Authority. Therefore, he imposed the impugned penalty of Rs. 1,74,000/-. Aggrieved against this the

assessee preferred appeal before learned CIT(A) who also sustained the penalty. Aggrieved against this the assessee is in appeal before this Tribunal.

4. At the outset learned counsel for the assessee drew our attention to the assessment order whereby the AO had initiated penalty proceedings u/s 271(1)(c) of the Act. He submitted that the AO initiated the penalty without specifying the charge. Further, he contended that even the penalty notice also did not disclose the specific charge. He submitted that under identical facts the Hon'ble Jurisdictional High Court in the case of PCIT v. Sahara India Life Insurance Company Ltd. in ITA nos. 475-426-427-429/2019, order dated 02.08.2019, has upheld the order of the ITAT, holding 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. Learned counsel also placed reliance on the decisions of the Coordinate Benches of the Tribunal in the case of Meena Singhal vs. ITO in ITA no. 1550/Del/2023 dated 27.06.2023; George Kutty vs. DCIT in ITA no. 3788/Del;/2019 dated 24.08.2022; and Legend Realtors Pvt. Ltd. vs. ITO in ITA no. 36/Del/2021 dated 21.10.2022.

5. On the other hands, learned DR opposed the submissions and supported the penalty order.

6. We have heard rival contentions and perused the material available on record. Learned DR could not controvert the fact that the AO has not specified the charge while initiating penalty proceedings in the assessment order and also has

not specified the charge in the notice issued u/s 271(1)c) of the Act. The law is well settled in this regard. The Hon'ble Delhi High Court in the case of PCIT v. Sahara India Life Insurance Company Ltd. (supra), inter alia, has 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 JTR 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. 11845 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.”

7. Furthermore, this judgment of the Hon'ble Delhi High Court has been followed by various Benches of the Tribunal in the cases of Meena Singhal vs. ITO (supra); George Kutty vs. DCIT(supra); and Legend Realtors Pvt. Ltd. vs. ITO (supra). Therefore, respectfully following the decision of the Hon'ble Delhi High Court as well as the orders of the Tribunal, referred to above, we hold that the initiation of penalty proceedings as well as notice issued by the AO u/s 271(1)(c) of the Act were bad in law. Therefore, the penalty levied by the AO and sustained

by the learned CIT(A) on the basis of invalid notice deserves to be deleted. We order accordingly. The AO is directed to delete the impugned penalty levied u/s 271(1)(c) of the Act. Grounds are allowed.

8. Appeal of the assessee is allowed.

Order pronounced in open court on 6th November, 2023.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER
MP

Copy forwarded to:

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

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI