

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : C : NEW DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.1583/Del/2019
Assessment Year: 2013-14

India Flysafe Aviation Ltd.,
NTH Building, 3rd Floor,
Qutub Institutional Area,
A/2, Shaheed Jeet Singh Marg,
Near Katwaria Sarai,
USO Road,
New Delhi.

Vs DCIT,
Circle-12(1),
New Delhi.

PAN: AAHCS8618Q

(Applicant)

(Respondent)

Assessee by : Shri Salil Kapoor, Advocate,
Shri Tarun Chanana, Adv.,
Ms. Ananya Kapoor, Adv. &
Shri Sumit Lalchandani, Adv.
Revenue by : Ms Meenakshi Dohare, Sr. DR
Date of Hearing : 09.11.2023
Date of Pronouncement : 19.01.2024

ORDER

PER ANUBHAV SHARMA, JM:

The appeal is are preferred by the Assessee against the order dated 30.11.2018 of the Commissioner of Income Tax (Appeals)-22, New Delhi, (hereinafter referred to as the Ld. First Appellate Authority or 'Ld. FAA', for short) in appeal No.87/17-18/CIT(A)-22, New Delhi, arising out of the appeal

before it against the order dated 26.02.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the DCIT, Circle 12(1), New Delhi (hereinafter referred to as the Ld. AO).

2. Heard and perused the record. At the time of argument, the ld. AR has pointed out that ground No.4 arises out of the fact that at the time of issuance of notice u/s 271(1)(c)/274 of the Act, the AO had not indicated as to under which limb of the said section the notice has been issued.

3. In this regard, if we consider the penalty notice dated 26.02.2016 available at page 58 of the paper book, the same shows that without striking off as to which of the part the said notice, the assessee was called on to reply, the notice was issued. The notice does not make it clear if the assessee was called upon to explain for concealment of particulars of income or for furnishing inaccurate particulars of income.

4. As we take into account the assessment order dated 26.02.2016, it comes up that in regard to disallowances made the AO, he had primarily recorded satisfaction that the assessee has furnished inaccurate particulars of income and, accordingly, on that basis, only the impugned order was passed.

5. Thus, there is substance in the contention of the ld. AR that in the absence of striking off specific limb in the notice, the notice was invalid and the

consequential penalty order is not sustainable in law. Reliance in this regard can be placed on the judgement of the Hon'ble Delhi High Court in the case of *PCIT vs. Sahara India Life Insurance Company Ltd., 432 ITR 84 (Del)*.

6. Even otherwise, we have, vide our separate order dated 12.01.2024 in ITA No.1582/Del/2019, already deleted the additions made by the ld. AO arising out of disallowance of depreciation and in regard to other issues of disallowance on deferred expenditure, the issue has been restored to the files of ld.CIT(A). Therefore, on merits also the penalty is not sustainable.

7. Consequently, the grounds raised are allowed and the appeal of the assessee is allowed. The impugned penalty order is set aside.

Order pronounced in the open court on 19.01.2024.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 19th January, 2024.

dk

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi