

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.3269/Del/2023

निर्धारणवर्ष/Assessment Year: 2011-12

Neeta Breja, C/o M/s Raj Kumar & Associates, L-7A (LGF), South Extension Part-II, New Delhi.	बनाम Vs.	ITO, Ward-30(5), New Delhi.
PAN No. AHMPB3154D		
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे /Assessee by	Shri Raj Kumar, CA
राजस्वकीओरसे /Revenue by	Shri Anuj Garg, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	28.12.2023
उद्घोषणाकीतारीख/ Pronouncement on	14.03.2024

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals)-(NFAC), Delhi dated 19.12.2023 for the AY 2010-11 in sustaining the penalty levied u/s 271(1)(c) of the Act.

2. Ld. Counsel for the assessee, at the outset, submits that the penalty order passed u/s 271(1)(c) of the Act is bad in law for the reason that the notice issued u/s 271 r.w.s. 274 of the Act was without mentioning the specific charge for which the penalty was proposed to be levied. Ld. Counsel submits that since in the notice

the relevant limb was not specified i.e. the penalty was proposed for concealment of particulars of income or for furnishing of inaccurate particulars of income the notice is illegal and consequently, the penalty order passed u/s 271(1)(c) of the Act is bad in law. Reliance was placed on the decision of the Jurisdictional High Court in the case of PCIT Vs. Sahara India Life Insurance Company Ltd. 432 ITR 84.

3. Heard the rival submissions and perused the orders of the authorities below and the notice issued u/s 271 r.w.s. 274 of the Act dated 21.03.2013. On observing the notice issued u/s 271 r.w.s. 274 of the Act dated 21.03.2013 it is noticed that the AO did not specify the limb for which the penalty notice was issued. In other words, the AO did not specify the limb for which penalty is proposed to levy i.e., either for concealment of particulars of income or furnishing of inaccurate particulars of income. It is observed that the Jurisdictional High Court considered similar issue in the case of PCIT Vs. Sahara India Life Insurance Co. Ltd. (supra), wherein the High Court upheld the order of the Tribunal in 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) of the Act the penalty proceedings

had been initiated. The relevant observations of the Hon'ble High Court are as under: -

“21. The Respondent had challenged the upholding of the penalty imposed u/s 271(1)(c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in CIT Vs. Manjunatha Cotton & Ginning Factory [2013] 35 taxmann.com 250/218 Taxman 423/359 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 CIT vs. SSA's Emerald Meadows [2016] 73 taxmann.com 241, 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.”

4. Respectfully following the order of the Hon'ble High Court, we hold that the notice issued u/s 271 r.w.s. 274 of the Act dated 21.03.2013 is bad in law and consequently the penalty order passed u/s 271(1)(c) of the Act is *void ab initio*. We direct the AO to delete the penalty levied u/s 271(1)(c) of the Act. Ground no.2 of grounds of appeal of the assessee is allowed.

5. As we have decided the appeal on the very validity of issue of notice for levy of penalty in favour of the assessee the grounds

raised by the assessee on merits are not adjudicated as it is only academic at the stage.

6. In the result, appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 14/03/2024

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 14.03.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi