

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2988/Del/2019 : Asstt. Year : 2006-07

Umanath Finvest Pvt. Ltd., 3005, Sant Nagar, Rani Bagh, Opp. M2K, Pitampura, Delhi-110034	Vs.	Income Tax Officer, Ward-27(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACU2725P		

Assessee by : None

Revenue by : Sh. Vivek K. Upadhyay, Sr. DR

Date of Hearing: 11.03.2024

Date of Pronouncement: 03.05.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-28, New Delhi dated 25.01.2019.

2. Following grounds have been raised by the assessee:

"1. That the Income Tax officer have erred in levying a penalty of Rs. 70,68,600/- under section 271(1)(c) of Income Tax Act, 1961.

2. That the levy of penalty confirmed by the Ld CIT (A)-28, New Delhi u/s 271(1)(c) of the Income Tax Act, 1961 is illegal, void and bad in law, vitiated by non-application of mind and is without jurisdiction as the penalty notice issued by the A.O. u/s 271(1)(c)/274 of the act does not strike off the relevant portion thereof.

3. That the assessee company may kindly be given the right to make further additions to the above grounds of the appeal at the time of hearing the appeal."

3. The Assessing Officer made addition of Rs.2,10,00,000/- to the total income on account of share capital received during the

F.Y. 2005-06. Consequent to the addition, penalty u/s 271(1)(c) has been levied by the AO.

4. We find that the page no. 5 below para 9, the Assessing Officer has also mentioned "*that penalty u/s 271(1)(c) r.w.s. 274 of the Income Tax Act, 1961 is initiated separately for concealment of income/filing of inaccurate particulars of income.*" We also find at page 6 of Assessment Order, the AO mentioned "*Penalty proceedings u/s 271(1)(c) is initiated separately.*"

5. We also find that the page no. 5 of the penalty order reads as under:

"11.....the assessee company has deliberately concealed the particulars of income by furnishing inaccurate particulars of its income."

6. We have also gone through the order of the Id. CIT(A) page no. 3 wherein the issue of notice u/s 274 r.w.s. 271 of the Income Tax Act, 1961 served by the Assessing Officer was agitated for not mentioning the specific allegation.

7. On this issue, we are guided by the following judgments:

- 1) Karnataka High Court: CIT vs. Manjunatha Cotton and Ginning Factory: 359 ITR 565 held that notice under section 274 should specifically state the grounds mentioned in section 271(1)(c) of the Act, i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy requirement of law.

- 2) Bombay High Court: Mr. Mohd. Farhan A. Shaikh Vs ACIT Section 271(1)(c): Penalty-Concealment-Non-striking off of the irrelevant part while issuing notice u/s 271(1)(c) of the Income Tax Act, order is bad in law. Assessee must be informed of the ground of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.
- 3) The Hon'ble jurisdictional Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd. in ITA No. 475 of 2019, reiterated that notice under section 274 should specifically state the grounds on which penalty was sought to be imposed as the assessee should know the grounds which he has to meet specifically.
- 4) The aforesaid principle has been reiterated in the in the case of CIT vs. SSA'S Emerald Meadows: 73 taxmann.com 241 (Kar) [Revenue's SLP dismissed in 242 Taxman 180]
8. Hence, respectfully following the order of the Hon'ble Jurisdictional High Court, since the AO has not been specified u/s 274 as to whether penalty is proposed for alleged 'concealment of income' OR 'furnishing of inaccurate particulars of such income', the penalty levied is hereby obliterated.
9. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 03/05/2024.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 03/05/2024

Subodh Kumar, Sr. PS

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member