

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No. 6219/DEL/2017  
Assessment Year: 1998-99**

DCIT, Circle-3(2), New Delhi.	<u>Vs</u>	Asian Consolidated Industries Ltd., 96 <sup>th</sup> Mile Stone, Delhi Jaipur Highway, Village Bawal, Distt. Rewari, Haryana-201541 <b>PAN- AAACA 5887 A</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Shri Ved Jain, Adv.; Ms. Supriya Mehta, CA; & Shri Amit Sharma, CA	
<b>Department represented by</b>	Ms. Sunita Kumar, CIT(DR); & Shri Kanv Bali, Sr. DR	
<b>Date of hearing</b>	07.05.2024	
<b>Date of pronouncement</b>	28.05.2024	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the Revenue, is directed against the order of the learned Commissioner of Income-tax (Appeals)-10, New Delhi, dated 26.07.2017,

pertaining to the assessment year 1998-99. The Revenue has raised following grounds of appeal:

*“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting penalty of Rs.2,57,51,235/- imposed by the AO u/s 271(1)(c) of the Income-tax Act, 1961.*

*2. Ld. CIT(A) has erred on facts and in law in holding the penalty proceedings initiated and levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 as invalid since the show cause notice and the penalty order passed by the AO are in conformity with the intent and purpose of the Income Tax Act, 1961 and hence the infirmity, if any, in these are taken care of by the provisions of Section 292B of the Income Tax Act, 1961.*

*3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

2. Briefly stated facts are that for A.Y. 1998-99 original return of income was filed on 30.11.1998 declaring loss of Rs. 12,41,10,146/-. Assessment u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) was framed on 21.03.2001 at a total income of Rs. 27,76,640/-. The said order stood set aside vide order dated 26/27.03.2015 of the learned PCIT passed u/s 264 of the Act. Accordingly, In fresh assessment order 08.03.2016, u/s 143(3) read with section 264 of the Act, the AO assessed the assessee’s income at a loss of Rs. 5,05,35,194/-. In doing so the AO rejected the books of account u/s 145 of the Act and against gross loss of Rs. 6,21,67,943/-, gross profit was estimated at 10.73% on the turnover of Rs. 10,63,09,501/- and on the basis of estimation of profit an

addition of Rs. 1,14,07,009/- was made. The assessee did not file any appeal against the said estimation of profit. AO also initiated penalty proceedings u/s 271(1) (c) of the Act and vide order dated 22.09.2016 levied a penalty of Rs. 2,57,51,235/- being 100% of tax sought to be evaded. Aggrieved against this the assessee preferred appeal before the learned CIT(A), who deleted the penalty on the basis that the notice u/s 274 read with Section 271(1)(c) of the Act, issued by the Assessing Authority, was invalid as it did not comply with the requirement of law inasmuch it did not mention the specific charge of offence committed by the assessee. Against it, the Revenue has come up in appeal, assailing the correctness of the order of the learned CIT(A).

3. Learned CIT(DR) submitted that the learned CIT(A) was not justified in deleting the impugned penalty purely on technical grounds. Learned CIT(DR) submitted that the learned CIT(A) ought to have sustained the penalty.

4. On the other hand, learned counsel for the assessee opposed the submissions and invited our attention to the paper book to demonstrate that the notice issued by the Assessing Authority was defective inasmuch in not mentioning the specific charge i.e. whether the assessee has concealed its particulars of income or furnished inaccurate particulars of such income. He contended that the issue is squarely covered by the decision of Hon'ble Jurisdictional High Court of Delhi

rendered in the case of PCIT & others Vs. M/s Sahara India Life Insurance Company Ltd. 2019 (8) TMI 409, dated 02.08.2019. He further reiterated the submissions as made in the synopsis. For the sake of clarity, the synopsis is reproduced as under:

**“A. In absence of a particular limb, no penalty should have been levied on the assessee as the determination of such limb is sine qua non for imposition of penalty u/s 271(1)(c)**

1. This is an appeal filed by revenue against the order dated 22.11.2017 passed by CIT(A) deleting the penalty of Rs.2,57,51,233/-levied by AO u/s 271(1)(c) of the Act.

2. It is relevant to note here that Ld. AO had initiated penalty proceedings vide issuing notice dated 08.03.2016 u/s 274 r.w.s. 271 of the Act. Copy of such notice is enclosed at PB Pg. 37.

3. However, while issuing such notice, the AO has failed to specify the limb under which the penalty u/s 271(1)(c) is being initiated i.e. whether it is for concealment of the particulars of the income or for furnishing inaccurate particulars of the income. This clearly indicates that the entire exercise of initiation of penalty proceedings has been done in a casual and cavalier manner.

4. It is a settled provision of law that notice issued by AO under Section 274 read with Section 271(1)(c) is bad in law if it did not specify which limb of Section 271(1)(c) of the Act is attracted and thus the penalty proceedings are liable to be quashed. Reliance is placed on the following judicial pronouncements in this regard:

- COMMISSIONER OF INCOME TAX & ANR. VERSUS M/S SSA'S EMERALD MEADOWS, 2016 (8) TMI 1145-SC ORDER, Dated: 5-8-2016

- PR. COMMISSIONER OF INCOME TAX, AND OTHERS VERSUS M/S. SAHARA INDIA LIFE INSURANCE COMPANY, LTD., 2019 (8) TMI 409-DELHI HIGH COURT, Dated: -2- 8-2019

- *PRINCIPAL CIT, CENTRAL 2, KOLKATA VERSUS BRIJENDRA KUMAR PODDAR, 2021 (12) TMI 24-CALCUTTA HIGH COURT, Dated: 23-11-2021*

- *COMMISSIONER OF INCOME TAX, BANGALORE AND THE INCOME TAX OFFICER, WARD-6 (3), BANGALORE VERSUS M/S SSA'S EMERALD MEADOWS, 2015 (11) TMI 1620-KARNATAKA HIGH COURT, Dated: 23-11-2015*

5. *Moreover, in the present case, the limb of Section 271(1)(c) has neither been specified in the quantum assessment order dated 08.03.2016 (PB Pg. 28-33, relevant PB pg. 31), nor in the penalty show cause notice dated 08.03.2016 (PB Pg. 34), nor in another show cause notice dated 13.07.2016 (PB Pg. 37). Infact, in the Penalty Order dated 22.09.2016 (PB Pg.61-63, relevant PB Pg.63) passed by the AO u/s 271(1)(c) of the Act, limb has again not been pointed out by the AO. This depicts a clear violation of the provisions of Section 271(1)(c) and non-application of mind of the AO.*

6. *Therefore, in the absence of specification of the limb, no penalty u/s 271(1)(c) could be initiated and the penalty notice issued to the assessee dated 08.03.2016 is defective and therefore the action of the CIT(A) in deleting the penalty is correct.*

**B. No penalty can be imposed on additions which are based on estimates and mere disallowance of claims**

1. *Brief facts of the case are that the assessee had filed its ITR on 30.11.1998 declaring a loss of Rs.12,41,10,146/- and the assessment proceedings for the year was completed on 21.03.2001 ex-parte when the company was under liquidation. Thereafter, the assessee filed an appeal u/s 264 of the Act wherein the assessment order dated 21.03.2001 was set aside to the file of the AO for making a de-novo assessment.*

2. *During the course of such set-aside proceedings, the assessee could not provide the books of accounts due to non-receipt of the books, vouchers and other documents by the Office of the Official Liquidator. In this regard, the assessee submitted the copies of minutes prepared by the Official Liquidator on 05.04.2000 and 06.04.2000 while allowing inspection of the records of the assessee. However, this explanation furnished by the assessee along with the evidences was completely ignored by the AO and the income of the assessee was computed by estimating the Gross Profit by way of averaging the results shown in the earlier years.*

3. Thereafter, a penalty amounting to Rs.2,57,51,233/- was levied by the AO on the above- mentioned estimated amount of addition.

4. The fact that addition has been made by way of estimation of Gross Profit has been duly acknowledged by the AO at Pg. 2 second Para of the Penalty Order dated 22.09.2016 wherein it has been mentioned that "I therefore apply average G.P. of the above two AYs i.e. AY 1995-96 and AY 1996-97 to arrive at a fair estimate of G.P. in the current year..".

5. CIT(A) has also acknowledged the fact that the addition had been made on the basis of estimation and there is no other material to prove that the assessee has concealed any income or furnished any inaccurate particulars of its income. The relevant finding is at Pg. 10 of the CIT(A) Order which is also reproduced hereunder:

*"I have considered the submission of the appellant and observation of the Assessing Officer in the penalty order. It is seen that penalty has been levied in the case of the appellant on the basis of disallowance of loss and estimation of the profit on the turnover declared by the appellant. The AO has disallowed loss and estimated profit due to the fact that appellant could not produce books of accounts before the AO at the time of assessment made u/s 143(3) read with section 264 of the Act as the appellant did not received the books of accounts from the Official Liquidator on revival of the Company. However, the fact of the matter is that there is no information on record that appellant has concealed any income or furnished inaccurate particulars of its income. The estimation has been made simply on the basis of non-production of books of accounts. There is no information that appellant has misinterpreted its turnover or expenses claimed in the audited books of accounts.*

*It is also seen that quantum proceedings are different from the penalty proceedings. Simply because certain profit has been estimated it automatically could not lead to the conclusion that appellant has concealed its income, therefore the penalty levied by the Assessing Officer on estimation basis is not justified. In this regard, reliance is placed on the judgement of Hon'ble Delhi High Court in the case of Aero Traders wherein Court has held that penalty cannot be levied u/s 271(1)(c) where addition is made on estimation basis. Similar views have been expressed by Hon'ble Punjab & Haryana High Court in the case of Hari Gopal Singh Vs. ITO wherein the court has held that*

*explanation furnished by the appellant for non-maintaining of books of accounts and showing profit on estimation basis was found to be bona fide. In the case of the appellant also, the explanation furnished by the appellant is found to be bona fide as it could not produce books of accounts due to the fact that same were not received from the Official Liquidator on revival of the company. Hence, the Assessing Officer was not justified in levying penalty u/s 271(1)(c) of the I.T. Act on disallowance of loss and estimation basis of Rs. 2,57,51,235/-, Hence, the same is deleted."*

6. *Reliance is also placed on the following judicial pronouncements wherein it has been held that no penalty u/s 271(1)(c) can be imposed when income is determined on estimated basis:*

*- COMMISSIONER OF INCOME-TAX VERSUS KRISHI TYRE RETREADING AND RUBBER INDUSTRIES, 2014 (2) TMI 21 - RAJASTHAN HIGH COURT, Dated: - 19-9- 2013*

*- COMMISSIONER OF INCOME TAX VERSUS AERO TRADERS (P) LTD., 2010 (1) TMI 32-DELHI HIGH COURT, Dated: 25-1-2010*

*- COMMISSIONER OF INCOME-TAX-III VERSUS MODI INDUSTRIAL CORPORATION, 2009 (11) TMI 891-PUNJAB & HARYANA HIGH COURT, Dated: 25-11-2009*

*- Supertech Construction Company V. Assistant Commissioner of Income Tax, Circle 27(3), Mumbai, ITA No. 910/MUM/2023, IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI, Dated; 05.12.2023*

*- MOHD. JAWED VERSUS ITO WARD-3 (3) BIJNOR, UTTAR PRADESH, 2023 (6) TMI 381-ITAT DELHI, Dated: - 11-5-2023*

*- MACHINFABRIK VERSUS INCOME TAX (APPEALS), INCOME TAX DEPARTMENT, NATIONAL FACELESS APPEAL CENTRE, NEW DELHI, 2023 (5) TMI 30 ITAT MUMBAI, Dated: 27-4-2023*

7. *In view of the above-mentioned facts and circumstances of the case and the case laws relied upon by the assessse, the penalty amounting to Rs.2,57,51,233/- levied by the AO u/s 271(1)(c) has been rightly deleted by CIT(A)."*

5. We have heard rival submissions and perused the material available on record. The impugned notice dated 08.03.2020 issued by the AO, reads as under:-

*“Office of the Income tax Officer, Ward 3(3), Room No 398,  
C.R. Building, New Delhi.*

*NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE  
INCOME TAX 271(1)(c)*

*Dated: 08.03.20*

*To*

*The Principal Officer,  
M/s Asian Consolidated Industries Ltd.  
96th Mile Stone,  
District-Bawal, Rewari,  
Jaipur Highway, Haryana*

*In the course of proceedings before the AO for the assessment year 1998-1999 it appears to me that you:-*

***\*have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5.***

*You are hereby requested to appear before me at 11:00 A.M. on 04.04.2016 and show cause why a order imposing a penalty on you should not be made under section 271(1)(c) of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorize representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271(1)(c)*

*Sd/-  
Income Tax Officer  
Word-3(3), New Delhi.”*

5.1 It is seen that in the impugned penalty notice the AO has mentioned as under:

***“\*have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5.”***

5.2 It is seen that the AO has not struck off the inappropriate portion therein. The notice, so issued, does not mention the specific charge i.e. whether the assessee has concealed particulars of its income or furnished inaccurate particulars of such income. Hence, the show cause notice issued u/s 274 read with Section 271(1)(c) of the Act dated 08.03.2016 becomes defective and bad in law, therefore, no penalty u/s 271(1)(c) can be levied in such case. The issue is squarely covered by the ratio of decision of the Hon'ble Jurisdictional High Court of Delhi in the case of PCIT & others Vs. M/s Sahara India Life Insurance Company Ltd. (supra), observing 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 [2013] 35 taxmann.com 250/218 Taxman 423/359 ITR 565 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 v. 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.”*

5.3 The Revenue could not bring any contrary material on record to demonstrate that the notice so issued contained specific charge. The order of the learned CIT(A)

being in consonance with the decision of the Hon'ble Jurisdictional High Court, in the light of binding precedents, we are not inclined to interfere in the order of learned CIT(A). Accordingly, order of learned CIT(A), deleting the penalty levied by the AO u/s 271(1)(c) of the Act, is hereby affirmed. Accordingly, grounds raised by the Revenue are rejected.

6. Appeal of the Revenue is dismissed.

Order pronounced in open court on 28<sup>th</sup> May, 2024.

**Sd/-**  
**(BRAJESH KUMAR SINGH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**