

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

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

**Sh. Anubhav Sharma, Judicial Member**

**ITA No. 3908/Del/2018 : Asstt. Year: 2005-06**

**ITA No. 3909/Del/2018 : Asstt. Year: 2007-06**

Gautam Kumar, Rajnish & Associates, CA, 92 & 87, Defence Colony Flyover Market, New Delhi-110024	Vs	ACIT, Central Circle-12, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AIGPK0403M</b>		

**Assessee by : Sh. Sumit Bhatnagar, CA  
Revenue by : Ms. Parul Singh, Sr. DR**

**Date of Hearing: 19.06.2024**

**Date of Pronouncement: 21.06.2024**

**ORDER**

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

The present appeals have been filed by the assessee against the orders of Id. CIT(A)-42, New Delhi dated 28.02.2018 and 01.03.2018.

2. Since, the issue involved in both the appeals are similar and they were heard together and being adjudicated by a common order. In ITA No. 3908/Del/2018 is taken as the lead case. Following grounds have been raised by the assessee:

*"1. That the Ld. CIT (A) has grossly erred in confirming the imposition of penalty of Rs. 62,271/- under Section 271(1)(c) of the Income Tax Act, 1961, vide its order dated 28.02.2018.*

*2. That the Ld. CIT (A) has grossly erred in law in confirming the penalty imposed on the basis of vague show cause notice under Section 274 which is entirely and blatantly against the*

*established provisions of law and multitudes of precedents recently decided by jurisdictional authorities.*

*3. That the Ld. CIT (A) has grossly erred in law and fact in confirming the penalty which was initiated in the assessment order on the grounds of "furnishing inaccurate particulars of income" but ultimately imposed vaguely on "concealment of income or furnishing inaccurate particulars of income which is entirely unjust and in violation of established precedent and the principles of natural justice.*

*4. That the Ld. CIT (A) has grossly erred in law in distinguishing the case of M/s Veerabhadrapa Sangappa & Co. [ITA NO. 5020 OF 2009] without considering the point of law settled by the Hon'ble Supreme Court in the SSA Emerald case [CC No. 11485 of 2015] which has been followed in multiple cases, which is entirely arbitrary and unjust.*

*5. That the Ld. CIT (A) has grossly erred in facts and law in confirming the penalty on the estimated quantum addition of Rs. 1,85,000/- in respect of cost price of Car without appreciating that appellant has computed his income under the special provision for computing profits and gains of business of civil construction u/s 44AD and therefore there is no concealment or furnishing of inaccurate particulars on behalf of the assessee which is entirely baseless and arbitrary.*

*6. That the Ld. CIT (A) has grossly erred in facts and law in confirming the penalty of Rs. 62,271/- on the quantum addition of Rs. 1,85,000/- without appreciating that no penalty can be imposed on additions made on an estimate basis and arbitrarily distinguishing the precedents submitted by the assessee which is entirely baseless, unjust and arbitrary."*

3. The last para of the Assessment order reads as under:

*"Assessed as above. Give credit for prepaid taxes. Charge interest u/s 234A, 234B and 234C of I.T. Act 1961 as per provisions of Income Tax Act, 1961. Issue demand notice and challan alongwith a copy of this order to the assessee. **Penalty proceeding u/s 271(1) (c) of the Income Tax Act for furnishing inaccurate particulars of income are initiated separately.** Penalty proceedings u/s 271(1)(b) of the Income Tax Act are initiated separately for non compliance of notice u/s 142(1)."*

4. Para 2 of the penalty order reads as under:

*"2. Being satisfied that assessee has concealed his income by furnishing inaccurate particulars of his income, penalty proceedings u/s 271(1)(c) of the Act were initiated and penalty notice under section 274 r.w. Section 271 of the I.T. Act was issued to the assessee on 29/12/2008, fixing the case for 19/01/2009. In this regard, assessee filed his reply on 19/05/2009 in which he requested to keep the penalty proceedings in abeyance till disposal of first appeal filed by assessee before the CIT(A). Submission of the assessee was considered and penalty proceedings u/s 271(1)(c) were kept in abeyance till disposal of first appeal."*

5. Para 5 of the penalty order reads as under:

*"5. By reason of the aforesaid, there is sufficient reason to come to the conclusion that the **assessee is guilty of deliberate concealment and furnishing inaccurate particulars of income amounting** to Rs. 1,85,000/-. Therefore, I hold the assessee in default in concealing the income and furnishing inaccurate particulars of his income of Rs. 1,85,000/-."*

6. Owing to the infirmity in the Assessment Order with regard to the initiation of the penalty proceedings, show cause notice issued under section 274 and in the penalty order, we hold that the penalty order cannot be upheld.

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 show cause notice and the penalty order do not match with each other 'concealment of income' **OR** 'furnishing of inaccurate particulars of such income', the penalty levied is hereby obliterated.

9. In the result, the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 21/06/2024.

**Sd/-**

**(Anubhav Sharma)  
Judicial Member**

**Sd/-**

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

**Dated: 21/06/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**