

आयकर अपीलीय अधिकरण
दिल्ली पीठ "डी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आअसं . 2656 & 2657/दिल्ली/2024 (नि . व. 2015-16 & 2016-17)
ITA Nos. 2656 & 2657/DEL/2024 (A.Ys.2015-16 & 2016-17)

M/s Michelin Global Mobility SA,
Route 10, Louis Braille, 1763 Granges Paccot,
Foreign, Switzerland 999999
PAN: AAHCM-6533-A

..... अपीलार्थी /Appellant

बनाम Vs.

Assistant/Deputy Commissioner of Income Tax,
Circle International Taxation 2(2)(1), Civic Centre,
Minto Road, New Delhi 110002

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Ananaya Kapoor,
S/Shri Tarun Chanana, and
Shivam Yadav, Advocates

प्रतिवादीद्वारा/ Respondent by : Shri Vijay B Vasanta, CIT-DR

सुनवाई की तिथि/ Date of hearing : 22/08/2024

घोषणा की तिथि/ Date of pronouncement : 22/08/2024

आदेश /ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the assessee for AY 2015-16 & 2016-17 are directed against the orders of Commissioner of Income Tax (Appeals), Delhi 110043 (hereinafter referred to as 'the CIT(A)'). Both the impugned orders are even date i.e. 27.03.2024 confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. Since, both appeals germinate from identical set of facts, these appeals are taken up together for adjudication and are decided by this common order.

ITA No. 2656/Del/2024 for AY 2015-16

3. Ms. Ananaya Kapoor, appearing on behalf of the assessee submitted that the Assessing Officer (AO) while passing assessment order dated 11.02.2019 has recorded satisfaction for initiation of penalty proceedings u/s. 271(1)(c) of the Act on the ground of “furnishing inaccurate particulars of income”. While levying penalty vide order dated 15.09.2021, the AO levied penalty on the limb of concealment of income. She submitted that order levying penalty is unsustainable as penalty has been levied for the reason other than the reason on which satisfaction was recorded. She further pointed that the notice issued u/s. 274 r.w.s. 271(1)(c) of the Act dated 11.02.2019 is also vague as the AO has mentioned both the limbs of section 271(1)(c) of the Act. In support of his submissions she placed reliance on the decision in the case of *CIT vs. SSA Emerald Meadows 73 taxmann.com 248 (SC)* and the decision of Hon’ble Karnataka High Court in the case of *CIT vs. Manjunatha Cotton & Ginning Factory, 359 ITR 565*.

4. Per contra, Shri Vijay B Vasanta representing the department vehemently defended the impugned order and prayed for dismissing appeal of the assessee.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. A perusal of assessment order shows that the AO has recorded satisfaction for initiation of penalty u/s. 271(1)(c) of the Act on the charge of “furnishing inaccurate particulars of income”. However, while levying

penalty vide order dated 15.09.2021, the AO has levied penalty on the charge of “concealment of income”. The Hon’ble Apex Court in the case of *T. Ashok Pai vs. CIT 161 taxmann.com 340* has held that “furnishing inaccurate particulars of income” and “concealment of income” are two different expressions having different connotations and cannot be used as substitute to each other.

6. The Hon’ble Karnataka High Court in the case of *CIT vs. Manjunatha Cotton & Ginning Factory (supra)* after threadbare examining with provision of section 271(1)(c) of the Act observed that:-

60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or a furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.”

[Emphasized by us]

7. Similar view has been expressed by the Hon’ble Bombay High Court in the case of *CIT vs Samson Perinchery, 392 ITR 4 (Bom)*.

8. Thus, in light of undisputed facts and the decisions referred above, we hold that the penalty levied u/s. 271(1)(c) of the Act in the instant case cannot be sustained as the same has not been levied on a charge for which satisfaction was recorded. In the result, impugned order is *set aside* and appeal of the assessee is allowed.

ITA No. 2657/Del/2024 for AY 2016-17

9. Both sides unanimously stated that the facts in appeal for AY 2016-17 are identical to facts in appeal for AY 2015-16.

10. On perusal of appeal file, we find that the AO while passing the assessment order has recorded satisfaction for initiation of penalty u/s. 271(1)(c) of the Act on the charge of “furnishing inaccurate particulars of income” and has levied penalty on the charge of “concealment of income”.

11. For the detailed reasons given while adjudicating appeal of the assessee for AY 2015-16 in ITA No. 2656/Del/2024, the impugned order is *set aside* and appeal of the assessee is allowed.

12. **In the result, both appeals of the assessee are allowed.**

Order pronounced in the open court on Thursday the 22nd day of August, 2024.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 22/08/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI