

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
and  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.1622/DEL/2023  
(Assessment Year: 2014-15)**

Sector 113 Gatevida Private Limited,  
(formerly known as Lemon Tree Land and  
Developers Private Limited),  
Plot No.6, J Block, Community Centre V,  
Rajouri Garden,  
New Delhi – 110 027.

vs. ACIT, Circle 4 (1),  
Gurgaon.

**(PAN : AACCL2552R)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Sukh Sagar Syal, Advocate  
Shri Nilay Jhaveri, Advocate  
REVENUE BY : Shri Dharm Veer Singh, CIT DR

Date of Hearing : 20.08.2024

Date of Order : 09.10.2024

**ORDER**

**PER S.RIFAUR RAHMAN,AM:**

The assessee has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals), Delhi ["Ld. CIT(A)", for short]/National Faceless Appeal Centre (NFAC) dated 31.03.2023 for the Assessment Year 2014-15.

2. Brief facts of the case are, the Assessing Officer completed the assessment under section 143 (3) of the Income-tax Act, 1961 (for short 'the Act') on 26.12.2016 at an income of Rs.379,64,74,760/-. Assessing Officer initiated the penalty proceedings by way of issuance of the notice u/s 271(1)(c) of the Act read with section 274. Disagreeing with the contentions raised by the assessee, AO reached at the conclusion that the assessee has furnished inaccurate particulars of income in order to decrease its tax liability and thereby levied a penalty of Rs.55,95,68,564/- @ 100% u/s 271(1)(c) of the Act.

3. Aggrieved with the above order, assessee preferred appeal before the Id. CIT (A) and before Id. CIT (A), assessee has made elaborate submissions. Id. CIT (A) partly allowed the appeal of the assessee.

4. Aggrieved with the above order, assessee is in appeal before us raising various grounds.

5. At the outset, Id. Counsel for the assessee began with an additional ground which read as under :-

“On the facts and circumstances of the case and in law, the Id. CIT (A) failed to appreciate that initiation of penalty proceedings was bad in law inasmuch as the limb under which the proceedings have been initiated was not specified in the notice issued under section 274 of the Act.”

6. Ld. Counsel for the assessee submitted that the additional ground is a legal ground and goes to the root of the case and for admission of the same, he relied upon the judgment of Hon'ble Supreme court in the case of NTPC Ltd. vs. CIT, (1998) 229 ITR 0383 (SC).


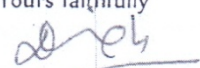
7. Since the legal ground raised goes to the root of the matter we admit the same on the touchstone of the above said case laws cited by the ld. Counsel of the assessee.

8. Although assessee has raised various grounds, at the outset, ld. Counsel of the assessee contended that the notice issued under section 274 read with section 271(1)(c) of the Act is a defective one. He submitted that the charge has not been specified in the notice, hence referring to various decisions including that of Hon'ble Bombay High Court in the case of Mr. Mohd. Farhan A. Shaikh vs. ACIT 434 ITR 1 (Bom)(FB) and Hon'ble Delhi High Court in PCIT vs. Sahara India Life Insurance Co. Ltd. 432 ITR 84 (Del.) & Pr. CIT vs. Gopal Kumar Goyal (2023) 153 taxmann.com 534 (Delhi), ld. Counsel for the assessee pleaded that the penalty order is liable to be quashed.

9. On the other hand, ld. DR for the Revenue objected to the above submissions and relied upon the orders of the authorities below.

10. Considered the rival submissions and perused the material placed on record. The Assessing Officer has not specified the relevant limb for initiation

of penalty proceedings in the notice issued u/s 274 of the Act. For the sake of clarity, the same is reproduced below :-

<b>Government of India</b> <b>Ministry of Finance</b> <b>INCOME TAX DEPARTMENT</b> <b>Office of the Deputy Commissioner of Income Tax, Circle-2, Gurgaon</b> (3 <sup>RD</sup> Floor, Vanijya Nikunj, HSIIDC Building, Udyog Vihar, Ph-V, Nr. Shankar Chowk, N.H.-8, Gurgaon) Ph. 0124-2450454]	
F.No. DCIT/C-2/GGN/16-17/ 8908	Dated: 26.12.2016
Notice Under Section 274 Read with Section 271(1)(c) of the Income Tax Act, 1961 215.N.S.-29	
<b>PAN:- AACCL2552R</b>	
<b>M/S LEMON TREE LAND &amp; DEVELOPERS</b> Flat no. 128, sec- 44, Gurgaon, Haryana	
<p>Whereas in the course of proceedings before me for the assessment year 2014-15 it appears to me that you:-</p> <p>* have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 21(1)/22(2)/34 of the I.T.Act,1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income Tax Act, 1961, No..... dated ..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.</p> <p>* have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of Indian Income Tax Act, 1992 or under section 142(1)/143(2) of the Income Tax Act, 1961 dated _____.</p> <p>* have concealed the particulars of your income or ..... Furnished inaccurate particulars of such income.</p> <p>You are hereby requested to appear before me at 11:00 AM on 27.01.2017 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax, 1961. if you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative, you may show cause in writing on or before the date which will be considered before any such order is made under section 271.</p>	
	Yours faithfully  (Jagdish Singh) Deputy Commissioner of Income Tax Circle-2, Gurgaon

10.1 We note that assessee has duly raised issue against the assumption of jurisdiction for the levy of section 271(1)(c) that in the penalty notice, relevant limb was not specified whether the penalty proceedings were initiated for concealment of income or furnishing of inaccurate particulars of income. When the same was not so specified in the penalty notice it has been held in the case laws cited before us that mention of the same in the assessment order or penalty order cannot cure fatal short-coming. When the charge has not been specified in the notice, it is an omnibus notice. In such circumstances, Hon'ble jurisdictional High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd. 432 ITR 84 (Del.) has held that the penalty order passed is liable to be quashed on account of this defect which is fatal. We further note that Full Bench of Hon'ble Bombay High Court in the case of Mr. Mohd. Farhan A. Shaikh vs. ACIT (supra) has held that no specification of charge in the penalty notice leads to same becoming void and penalty on that count is to be deleted. Hon'ble Court held as under :-

“Head Note only :

S.271(1)(c) : Penalty – Concealment –Non-striking off of the irrelevant part while issuing notice under section 271(1)(c) of the Income-tax Act, - Order is bad in law – Assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.”

10.2 Accordingly, following the precedent and on the undisputed proposition that relevant limb of the penalty notice was not specified as to whether penalty

was for concealment or furnishing of inaccurate particulars of income, we direct that the penalty in this case is liable to be deleted. Hence, we set aside the orders of the authorities below and decide the issue in favour of the assessee and accordingly directed to delete the penalty.

10.3 Since we have already quashed the penalty on the jurisdictional issue, the merits of the penalty levied are not being adjudicated at this stage being academic in nature.

11. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open court on this 9<sup>th</sup> day of August, 2024.**

Sd/-

sd/-

**(SUDHIR PAREEK)  
JUDICIAL MEMBER**

**(S.RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

Dated: 09.10.2024  
TS

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI