

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI  
BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
and  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.1140/DEL/2008  
(Assessment Year: 2001-02)**

M/s. Vijay Power Generators Ltd.,  
60, Shardhanand Marg,  
Delhi.

vs. ITO, Ward 17 (3),  
New Delhi.

**(PAN : AAACV0191N)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Kapoor, Advocate  
Ms. Ananya Kapoor, Advocate  
Shri Utkarsa Gupta, Advocate  
Shri Tarun Chanana, Advocate  
Shri Shivam Yadav, Advocate  
REVENUE BY : Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing : 13.02.2025  
Date of Order : 09.04.2025

**ORDER**

**PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :**

1. The assessee has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals)-XIX, New Delhi["Ld. CIT(A)", for short] dated 10.03.2008 for the Assessment Year 2001-02 raising following grounds of appeal :-

- “1. The notice issued u/s 271 (1) (c) and order imposing penalty under said section are illegal, bad in law, and without jurisdiction.
2. That the learned CIT (A)-XIX, New Delhi has failed to appreciate that no satisfaction was recorded before initiation of penalty proceedings u/s 271 (1) (c) and as such the notice issued u/s 271 (1) (c) and the

penalty order passed under said section are without jurisdiction and are liable to be quashed.

3. That in view of the facts and circumstance of the case the CIT (A)XIX, New Delhi has erred in law and on facts in partly upholding the penalty imposed u/s 271 (1) (c).
4. That the information filed and the material available on record are not properly considered and as such the order imposing penalty u/s 271 (1) (c) is illegal and bad in law.
5. That the appellant has not concealed any income and has not filed inaccurate particulars of income and the CIT (A) has failed to appreciate that all the expenses were duly vouched and the copies of said vouchers have been filed in the quantum appeal proceedings as well in the appeal against penalty imposed.
6. That the learned CIT (A) has failed to appreciate that the mere disallowances of expenses claim do not attract penalty u/s 271(1) (c) and has wrongly upheld the part penalty.
7. That in any case the penalty imposed is illegal, bad in law and highly excessive.”

2. The assessee has also taken the additional ground which read as under:-

“That in view of the facts and circumstances of the case and in law, the impugned notice dated 05.03.2004 issued by Income Tax Officer Ward – 17 (3), New Delhi under Section 271 of the Act is defective and hence, the AO has not assumed valid jurisdiction. Therefore, the penalty proceedings are liable to be dropped.’

3. Considered the rival submissions and material placed on record by both the parties. We observed that the issues raised by the assessee in additional ground goes to the root of the matter challenging the jurisdictional issue. In the light of Hon’ble Supreme Court in the case of NTPC, Limited vs. CIT (1998) 229 ITR 383 (SC), we are inclined to admit the additional grounds and take up the same for adjudication herein below.

4. First we deal with the additional ground.
5. Brief facts of the case are, the Assessing Officer completed the assessment under section 144 of the Income-tax Act, 1961 (for short 'the Act') on 05.03.2004 at an income of Rs.1,78,99,840/-. 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.59,47,400/- @ 100% u/s 271(1)(c) of the Act.
6. Aggrieved with the above order, assessee preferred appeal before the Id. CIT (A) and before Id. CIT (A), assessee has made elaborate submissions. After considering the above submissions, Id. CIT (A) dismissed the appeal filed by the assessee.
7. At the outset, Id. 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 i.e. Hon'ble Supreme Court in CIT vs. SSA Emerald Meadows (2016) 242 Taxman 180 (SC), Hon'ble Delhi High Delhi in Pr. CIT vs. Sahara india Life Insurance (2021) 432 ITR 84 (Delhi), CIT vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Karnataka), Pr. CIT vs. M/s. Blackrock Securities Pvt. Ltd. ITA 658/2023 and PCIT vs. Gopal Kumar Goyal

462 ITR 313 (Delhi), Id. Counsel for the assessee pleaded that the penalty order is liable to be quashed.

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

आयकर अधिनियम, 1961 की धारा 271-के साथ पढ़ी गई धारा 274-के अन्तर्गत नोटिस  
NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Income Tax Office,  
New Delhi

Dated: 5/3/2004

M/s Vijay Power Generation Ltd.  
60, Shardhamand Marg  
Delhi

Whereas in the course of proceedings before me for the assessment year 2003-04 appears to me that you :-

Have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961 dated.....  
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 herenby requested to appear before me at 11:00 A.M./P.M. on 11/3/2004 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered for any such order is made under section 271.

Recd. 9/3/04

Income Tax Officer  
Ward-17(3) N. Delhi

Assessing Officer  
Income Tax Officer  
Ward-17(3) N. Delhi

\*Delete inappropriate words and paragraphs.

10. 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 Delhi 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 434 ITR 1 (Bom)(FB) has held that no specification of charge in the penalty notice leads to same become 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.”

11. 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.
12. 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.
13. 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 April, 2025.**

Sd/-  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

sd/-  
**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Dated: 09.04.2025**  
**TS**

Copy forwarded to:

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

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