

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 1565/DEL/2025 [A.Y. 2008-09]

Vitasta Estates Pvt Ltd
15, Dr. Abdul Kalam Road
New Delhi

Vs.

The A.C.I.T.
Circle - 17(1)
Delhi

PAN - AACCV 0862 E

(Applicant)

(Respondent)

Assessee By : Shri Raj Kumar, CA
Shri Suraj Gupta, Adv

Department By : Shri Manish Gupta, Sr. DR

Date of Hearing : 06.08.2025
Date of Pronouncement : 19.08.2025

ORDER

PER NAVEEN CHANDRA, A.M.:-

This appeal by the assessee is preferred against the order of NFAC, Delhi dated 28.02.2025 for A.Y 2008-09.

2. The sum and substance of the grievance of the assessee is that the penalty order u/s 271(1)(c) of the Income-tax Act,

1961 [hereinafter referred to as 'the Act'] imposing penalty of Rs. 3,32,17,106 is illegal and unsustainable in law and is fatally defective for not specifying the limb under which the penalty action has been initiated.

3. Roots for levy of penalty lie in the assessment order dated 23.10.2010 framed u/s 143(3) of the Act.

4. Brief facts of the case are that the return of income was filed on 07.10.2008 declaring loss of Rs. 11,07,23,687. However, the Assessing Officer assessed the income of the assessee at NIL and initiated penalty proceedings u/s 271(1)(c) separately. Ultimately, the Assessing Officer imposed penalty of Rs. 3,32,17,106/- u/s 271(1)(c) of the Act vide order dated 26.06.2011.

5. The penalty order was challenged before the Id. CIT(A) and the Id. CIT(A), vide appellate order dated 08.05.2017 dismissed the appeal of the assessee. Upon being set aside by the ITAT, the CIT(A), in the 2nd round upheld the penalty order. The aggrieved assessee is before us.

6. Before us, the Id. counsel for the assessee vehemently argued that the notice u/s 271(1)(c) dated 23.12.2010 has not

specified the limb of section 271(1)(c) under which the AO proposed to levy the penalty and produced the copy of notice. Per contra, the Id DR submitted that no prejudice is caused to the assessee.

7. We have heard the rival submissions and have perused the relevant material on record. The submission of the assessee that the notice u/s 271(1)(c) does not specify the limb under which the penalty is to be levied was examined. We find that the notice u/s 274 r.w.s. 271(1)(c) of the Act which was issued and served upon the assessee, the AO specifies the following:

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

8. A perusal of the aforementioned notice clearly shows that the Assessing Officer did not specify under which limb of the provision he has initiated the proceedings. Where the penal proceedings are separate from assessment proceedings, while initiating penalty proceedings u/s 271(1)(c) of the Act, it is incumbent upon the Assessing Officer to demonstrate under which limb he is proposing to levy penalty.

9. On identical circumstances, the Hon'ble High Court of Delhi in the case of *Sahara India Life Insurance Company Ltd* ITA No. 475 of 2019 order dated 02.08.2019 has held 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* 359 ITR 565 (Kar) 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 *Commissioner of Income Tax v. SSA's Emerald Meadows* (2016) 73 Taxman.com 241 (Kar) , the appeal against which was dismissed by the Supreme Court of India in SLP No. 11485 of 2016 by order dated 5th August, 2016."

10. If the notice is read with the decision of the Hon'ble High Court of Delhi [supra], in our considered opinion, the penalty will not survive. It would not be out of place to refer to the decision of the Hon'ble High Court of Delhi in the case of *Virgo Marketing Pvt Ltd* [2008] 171 Taxmann 156 [Delhi] wherein the Hon'ble High Court held as under:

"We are unable to discern from a reading of the assessment order why the Assessing Officer chose to initiate penalty proceedings against the assessed and under which part of Section 271(1)(c) of the Act. In other words, we are unable to discern from the assessment order the reason for initiating penalty proceedings. Therefore, the concurrent view held by both the authorities below must be accepted."

11. Further, the Hon'ble Supreme Court in the case of ***SSA's Emerald Meadows Pvt Ltd*** [2016] 8 TMI 1145 has confirmed the Karnataka High Court order where it was held that notice issued by the Assessing Officer u/s 274 r.w.s 271(1)(c) of the Act to be bad in law as it did not specify which limb of section 271(1)(c) of the Act the penalty proceedings had been initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income. Further the hon'ble Supreme Court in the case of ***PCIT V Unitech Reliable Projects Pvt Ltd*** 166 taxmann.com 135(SC) has dismissed the SLP against ***PCIT V Unitech Reliable Projects Pvt Ltd*** 462 ITR 307(Del) where the hon'ble Delhi High Court held the penalty as unsustainable where limbs are not specified.

12. Considering the facts of the case in totality, in the light of judicial decisions referred to hereinabove, we set aside the findings of the Id. CIT(A) and direct the Assessing Officer to delete the penalty.

13. In the result, the appeal of the assessee in ITA No. 1610/DEL/2025 is allowed.

The order is pronounced in the open court on 19.08.2025.

Sd/-

**[MADHUMITA ROY]
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 19th AUGUST, 2025.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Sl No.	PARTICULARS	DATES
1.	<i>Date of dictation of Tribunal Order</i>	.
2.	<i>Date on which the typed draft Tribunal Order is placed before the Dictation Member</i>	
3.	<i>Date on which the typed draft Tribunal Order is placed before the other Member</i>	
4.	<i>Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.</i>	
5.	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
6.	<i>Date on which the signed order comes back to the Sr. P.S./P.S</i>	
7.	<i>Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website</i>	
8.	<i>Date on which the file goes to the Bench Clerk alongwith Tribunal Order</i>	
9.	<i>Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks</i>	
10.	<i>Date on which the file goes to the Supervisor (Judicial)</i>	
11.	<i>The date on which the file goes for xerox</i>	
12.	<i>The date on which the file goes for endorsement</i>	
13.	<i>The date on which the file goes to the Superintendent for checking</i>	
14.	<i>The date on which the file goes to the Assistant Registrar for signature on the Tribunal order</i>	
15.	<i>Date on which the file goes to the dispatch section</i>	
16.	<i>Date of Dispatch of the Order</i>	