

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.Nos.5118, 5119, 5120 & 5121/Del./2017
Assessment Years 2009-10, 2010-11, 2011-12, 2012-2013

M/s. Akhil Meditech Pvt. Ltd., C-30, Panchsheel Enclave, New Delhi. PIN – 110 017. PAN AAHCA2542B	vs.	The ACIT, Central Circle-6, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri P.C. Yadav, Advocate.
For Revenue :	Shri R.K. Gupta, Sr. D.R.

Date of Hearing :	19.10.2020
Date of Pronouncement :	19.10.2020

ORDER

PER BENCH :

All the appeals by Assessee are directed against different Orders of the Ld. CIT(A)-24, New Delhi, Dated 29.06.2017, for the A.Ys. 2009-2010 to 2012-2013, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. We have heard the Learned Representative of both the parties through video conferencing and perused the material available on record.

3. Briefly the facts of the case are that a search and seizure operation under section 132 of the IT Act was conducted at business premises of companies of Rockland Group as well as at the residential premises of Directors of the Companies on 06.09.2011. Survey under section 133A of the I.T. Act were also conducted at various premises of group cases. The A.O. issued notices under section 153C of the I.T. Act, 1961, for the A.Ys. 2009-10 to 2011-2012 and passed the assessment orders under section 153C of the I.T. Act, 1961. In A.Y. 2012-2013 the A.O. passed the assessment order under section 143(3) of the I.T. Act. The A.O. in all the assessment years made different additions on account of unexplained cash credits [protective basis], unexplained income, additional income disclosed before Settlement Commission and addition on account of seized documents. The A.O. initiated the penalty proceedings under section 271(1)(c) of the I.T. Act, 1961 and vide

separate Orders levied the penalty under section 271(1)(c) of the I.T. Act. The Ld. CIT(A) confirmed the levy of the penalty and dismissed the appeals of the assessee.

4. Learned Counsel for the Assessee referred to pages 6 to 9 of the paper book which are show cause notices Dated 20.06.2014 issued before levy of the penalty by the A.O. under section 274 read with section 271(1)(c) of the I.T. Act in which the A.O. has mentioned as under :

“Have concealed the particulars of your income or furnished in accurate particulars of such income.”

4.1. Learned Counsel for the Assessee also referred to page-6 of the PB whereby information under RTI Act was sought with regard to satisfaction note recorded by A.O. under section 153C of the I.T. Act and referred to page-14 of the PB in which it is reported that no such information is available in the Office of the Assessing Officer. Learned Counsel for the Assessee, therefore, submitted that the above notices issued before levy of the penalty to be bad in Law as it did not specify under which limb of Section

271(1)(c) of the I.T. Act penalty proceedings have been initiated. Therefore, penalty is liable to be cancelled. He has relied upon Judgment of the Hon'ble Delhi High Court in the case of Pr. CIT vs., Sahara India Life Insurance Company Ltd., reported in 2019-(8)-TMI-409-Del.-HC.

5. On the other hand Ld. D.R. relied upon the Orders of the authorities below.

6. We have considered the rival submissions and perused the material on record. Learned Counsel for the Assessee referred to the show cause notices issued by A.O. before levy of the penalty Dated 20.06.2014, the same are bad in Law as it did not specify under which limb of Section 271(1)(c) of the I.T. Act the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing inaccurate particulars of income. In the case of CIT vs. M/s. SSA's Emerald Meadows 73 taxmann.com 241 (Karn-HC.) the Hon'ble Karnataka High Court dismissed the Departmental Appeal in which the Tribunal allowed the appeal of assessee on the same reason by following its earlier decision in the case of CIT & Another

vs., Manjunatha Cotton and Ginning Factory [2013] 359 ITR 565 (Karn-HC.). The Judgment of Hon'ble Karnataka High Court have been affirmed by dismissing the SLP of the Department reported in 73 taxmann.com 248. The Hon'ble Delhi High court in the case of Pr. CIT vs. M/s. Sahara India Life Insurance Company Ltd., 2019-(8)-TMI-409-(Del.-HC) vide Judgment Dated 02.08.2019 in paras 21 and 22 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.

22. *On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises.”*

6.1. In view of the above, since the issue of notice itself is bad in Law, therefore, it vitiates the entire penalty proceedings and as such, the penalty proceedings are liable to be quashed. In view of the above discussion, we set aside the Orders of the authorities below and quash the penalty proceedings and delete the penalties in all the appeals. In view of the above, there is no need to decide the remaining issues involved in the appeals. All the appeals of the Assessee are allowed.

7. In the result, all the appeals of the Assessee are allowed.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 19th October, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.