

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

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.1438/Del./2017
(ASSESSMENT YEAR : 2008-09)**

M/s. Sampark Hotels (P) Ltd., vs. DCIT, Circle 7,
1110, Ansal Bhawan, New Delhi.
16, K.G. Marg, New Delhi.
(PAN : AABCS8097H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Satyen Sethi, Advocate
Shri A.T. Panda, Advocate

REVENUE BY : Shri Prakash Dubey, Senior DR

Date of Hearing : 01.02.2021

Date of Order : 24.02.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Sampark Hotels (P) Ltd. (hereinafter referred to as 'the assessee'), by filing the present appeal, sought to set aside the impugned order dated 05.01.2017 passed by learned Commissioner of Income-tax (Appeals)-22, New Delhi affirming the penalty order dated 13.03.2014 passed u/s 271(1)(c) of the Income-tax Act, 1961, qua the assessment year 2008-09 on the grounds inter alia that :-

"1. That on the facts and the circumstances of the case and in law, Commissioner of Income tax (Appeals)-22, New Delhi [briefly lthe CIT(A)] has erred in upholding the levy of penalty of Rs.47,93,100/ - under section 271(1)(c) of the Income tax Act, 1961 (" the Act").

2. That on facts and circumstances of the case and in law, there is apparent disconnect between the order levying the penalty and the appellate order confirming the penalty.

3. That on facts and circumstances of the case and in law, the CIT(A) did not appreciate that the inadvertent error of not taking into account the long term capital gains in computing book profit under section 115JB of the Act was set right much before the assessment proceedings were effectively taken up.

3.1 That on facts and circumstances of the case and in law, the mere fact that the revised return enhancing the book profit by the long term capital gains was filed after issuance of notice under section 143(2) of the Act did not take away bonafide and voluntary declaration of the correct income without any detection by the Department."

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment order dated 27.10.2010 framed u/s 143 (3) of the Income-tax Act, 1961 (for short 'the Act'), penalty proceedings have been initiated against the assessee for filing inaccurate particulars of income. Assessee filed original return of income on 30.09.2008 declaring an income of Rs.16,541/- under the normal provisions of the Act and Rs.27,745/- u/s 115JB of the Act. On issuance of the notice u/s 143(2) of the Act, assessee filed revised return of income u/s 139 (5) of the Act increasing the taxable book profit u/s 115JB of the Act to Rs.4,79,31,031/-. Whereas in the original return income long term

capital gain exempt u/s 10 (38) of the Act was excludible while computing the taxable book profit. Declining the contentions raised by the assessee that due to bonafide and inadvertent error, exempt income u/s 10(38) of the Act has been reduced by taxable book profit, AO levied the penalty to the tune of Rs.47,93,100/- @ 100% of tax sought to be evaded u/s 271(1)(c) of the Act.

3. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has confirmed the penalty by dismissing the appeal. Feeling aggrieved by the order passed by the Id. CIT (A), the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. First of all, Id. AR for the assessee contended that in order to initiate the penalty proceedings, the AO has failed to specify in the show-cause notice issued u/s 271(1)(c)/274 of the Act if the assessee has concealed the particulars of income or has furnished inaccurate particulars of income and relied upon the decisions of **Hon'ble Karnataka High Court in CIT vs. SSA's Emerald Meadows -73 taxmann.com 241 (Kar.) (Revenue's SLP dismissed in 242**

taxman 180) and Hon'ble High Court of Delhi in Pr. CIT vs. Sahara India Life Insurance Company Ltd. in ITA 475/2019 order dated 02.08.2019. Ld. AR for the assessee further contended that since the assessee has disclosed all particulars relating to sale of shares and long term capital gain in the return of income, deduction of long term capital gain of Rs.4,79,03,286/- in computing book profit u/s 115JB was bonafide mistake; that amendment to section 10(38) and 115B was made w.e.f. 01.07.2007 and relied upon the decisions of **coordinate Bench of the Tribunal in Aakruti Investments Ltd. vs. ITO in ITA No.7385/Mum/2014 dated 03.11.2017, ITO vs. Sitashri Trading & Finance Pvt. Ltd. in ITA No.2295/Del/2015 dated 01.10.2018 & decision of Hon'ble Rajasthan High Court in Anoopgarh Kraya Vikraya Sahakari Samiti Ltd. vs. ACIT (2015) 374 ITR 558 (Raj.).**

6. However, on the other hand, ld. DR for the Revenue to repel the arguments addressed by the ld. AR for the assessee contended that it is a clear case of furnishing of inaccurate particulars of income because revised return has been filed by the assessee company after five months only when notice u/s 143(2) of the Act was issued and that had there been no scrutiny assessment, the

income would not have been brought to tax and relied upon the order passed by the Id. CIT (A).

7. In the backdrop of the aforesaid facts and circumstances of the case, order passed by the lower authorities and arguments addressed by the authorized representatives of both the parties to the appeal, the sole question arises for determination in this case is:-

“as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income during assessment proceedings?”

8. Undisputedly, in the original return of income, assessee has disclosed all the true and full particulars relating to sale of shares and long term capital gains. It is also not in dispute that in the original return, assessee has claimed deduction of long term capital gains of Rs.4,79,03,286/- in computing book profit u/s 115JB of the Act. It is also not in dispute that in the revised return filed after issuance of notice u/s 143 (2) of the Act, assessee has computed the book profit of Rs.4,79,03,286/-.

9. It is the case of the AO that assessee by not including long term capital gain in the book profit in the return of income has furnished inaccurate particulars of income. But, on the other hand, assessee claimed this mistake as a bonafide and inadvertent one having been rectified by filing a revised return though filed after

issuance of notice u/s 143 (2) with which no questionnaire was filed.

10. First of all, AO has failed to specify in the show-cause notice issued u/s 271(1)(c) read with section 274 of the Act if the assessee has filed inaccurate particulars of income or has concealed the particulars of income and the ld. AR relied upon the decisions of **Hon'ble Karnataka High Court in CIT vs. SSA's Emerald Meadows -73 taxmann.com 241 (Kar.) (Revenue's SLP dismissed in 242 taxman 180) and Hon'ble High Court of Delhi in Pr. CIT vs. Sahara India Life Insurance Company Ltd. in ITA 475/2019 order dated 02.08.2019.**

11. In order to proceed further, we would like to peruse the notice dated 27.10.2020 issued by AO u/s 274 read with section 271(1)(c) of the Act to initiate the penalty proceedings which is extracted as under for ready perusal:-

**“NOTICE UNDER SECTION 274 READ WITH SECTION 271
OF THE INCOME TAX ACT, 1961.**

**Income Tax Office,
New Delhi.
Dated: 27.10.2010**

**To
M/s. Sampark Hotel (P) Ltd.,
1110, Ansal Bhawan, 16, K.G. Marg,
New Delhi**

**Whereas in the course of proceedings before me for the
assessment year 2008-09 it 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 hereby requested to appear before me at 11.00 AM/PM on 26.11.2010 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 authorized representatives you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.

**Sd/-
Assessing Officer,
Central Circle 20, New Delhi.”**

12. Bare perusal of the notice issued u/s 274 read with section 271(1)(c) of the Act, extracted above, in order to initiate the penalty proceedings against the assessee goes to prove that the AO himself was not aware / sure as to whether he is issuing notice to initiate the penalty proceedings either for “concealment of particulars of income” or “furnishing of inaccurate particulars of such income” by the assessee rather issued vague and ambiguous notice by incorporating both the limbs of section 271(1)(c). When the charge is to be framed against any person so as to move the penal provisions against him/her, he/she is required to be specifically made aware of the charges to be leveled against him/her.

13. Hon’ble Apex Court in case of **CIT vs. SSA’s Emerald Meadows - (2016) 73 taxmann.com 248 (SC)** while dismissing the SLP filed by the Revenue quashing the penalty by the Tribunal

as well as Hon'ble High Court on ground of unspecified notice has held as under:-

“Section 274, read with section 271(1)(c), of the Income-tax Act, 1961 - Penalty - Procedure for imposition of (Conditions precedent) - Assessment year 2009-10 - Tribunal, relying on decision of Division Bench of Karnataka High Court rendered in case of CIT v. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565/218 Taxman 423/35 taxmann.com 250, allowed appeal of assessee holding that notice issued by Assessing Officer under section 274 read with section 271 (1)(c) was bad in law, as it did not specify under which limb of section 271 (1)(c) penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income - High Court held that matter was covered by aforesaid decision of Division Bench and, therefore, there was no substantial question of law arising for determination - Whether since there was no merit in SLP filed by revenue, same was liable to be dismissed - Held, yes [Para 2] [In favour of assessee]”

14. Hon'ble Delhi High Court in case of **Pr. CIT vs. Sahara India Life Insurance Company Ltd.** (supra) while deciding the identical issue 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 of2016 by order dated 5th August, 2016.”

15. Following the decisions rendered in the cases of **CIT vs. Manjunatha Cotton and Ginning Factory**, **CIT vs. SSA's Emerala Meadows and Pr. CIT vs. Sahara India Life Insurance Company Ltd.** (supra), we are of the considered view that when the notice issued by the AO is bad in law being vague and ambiguous having not specified under which limb of section 271(1)(c) of the Act the same has been issued, the penalty proceedings initiated u/s 271(1)(c) are not sustainable.

16. Even otherwise, when the assessee has duly produced balance sheet and profit & loss account before the AO during the assessment proceedings and the income computed in the profit & loss account has been accepted and at the same time, it is nowhere the case of the Revenue that assessee has furnished false information or has not furnished necessary information.

17. So, mere mistake, claimed to be inadvertent by the assessee, is not a concealment of income by furnishing of inaccurate particulars in the facts and circumstances of the case, when the assessee has filed revised computation of book profit claiming correct figures acceptable to the Revenue. So far as question of filing the revised return only after issuance of notice u/s 143 (2) of the Act to the assessee is concerned, it is again undisputed fact that with the notice u/s 143(2), no questionnaire was issued pointing out

wrongly computing the book profit, leading to the reasonable inference that the mistake was inadvertent on the part of assessee.

18. Coordinate Bench of the Tribunal in case of **ITO vs. Sitashri Trading & Finance Pvt. Ltd.** (supra) decided the identical issue in favour of the assessee by following the decision rendered by **Hon'ble Allahabad High Court in CIT vs. Jindal Polyester & Steel Ltd. 365 ITR 225 (All.)** by returning following findings :-

“9. The main thrust of DR's contention is that it was only when the assessee was cornered by issuing notice u/s. 143(2) dated 11.12.2013 that the assessee filed the revised computation of book profit. In this context, it is significant to note that the AO issued questionnaire which does not contain even a whisper on this issue. Therefore, it can hardly be said that the assessee filed revised computation only when the ambiguity was pointed out by the AO. Secondly, the ld. CIT(A) in the impugned order has given various reasonable possibilities to commit the mistake by the assessee while computing the book profit in the return of income, which stood corrected by the assessee by filing the revised computation of book profit. The revised computation of book profit so filed by assessee stood accepted by the AO. In such view of matter, various decisions relied by the ld. DR are not applicable to the present case having not been based on parallel facts. In presence of these facts, we do not find any infirmity in the impugned order of ld. CIT(A) which is based on plausible reasons and decisions of Hon'ble Supreme Court (supra).

Hon'ble Allahabad High Court in the case of CIT vs. Jindal Polyester & Steel Ltd.,(2014) in ITA No. 73 OF 2001 , 365 ITR 225 (All.) held as under :

"This court, while dealing with the penalty under section 271(1)(c), in A/eo Manali Hydro Power (P) Ltd. (supra) has held as follows (page 527) :

"The Delhi High Court held that in respect of the company in question on the basis of normal provision income was assessed at negative, i.e., on loss of Rs. 36,95,21,018. The company was MAT company and that the assessment under section 115JB resulted in calculation of profit at Rs. 4,01,63,180. The income of the assessee was thus assessed under section 115JB and not under normal provision. It was held 'no doubt, there was concealment but that had its repercussions only when the assessment was done under the normal procedure. The assessment as per the normal procedure was, however, not acted upon. On the contrary, it is the deemed income assessed under section 115JB which has become the basis of assessment as it was higher of the two. Tax is thus paid on the income assessed under section 115JB. Hence, when the computation was made under section 115JB, the concealment had no role to play and was totally irrelevant. Therefore, the concealment did not lead to tax evasion at all. The upshot of the aforesaid discussion would be to sustain the order of the Tribunal, though on different grounds. Therefore, while the reasoning and approach of the Tribunal is not tenable, for the reasons disclosed above, penalty could not have been imposed even in respect of the false claim of depreciation made by the assessee. Cl T v. Gold Coin Health Food (P) Ltd. [2008] 304 ITR 308 (SC) ; [2008] 218 CTR (SC) 359 ; [2008] 11 DTR (SC) 185 distinguished."

15. *On the facts and circumstances we are of the view that the issue involved is squarely covered by Division Bench Decision of this court in the case of Aleo Manali Hydro Power (P) Ltd. (supra).*

16. *The book profit disclosed by the assessee for the purpose of the liability of tax under section 115J is relevant and not the income determined under the provisions of the Income-tax Act.*

17. *The Tribunal, on the facts and circumstances of the case, has further recorded the finding that, on the facts and in the circumstances of the case and on the bona fide of the explanation given by the assessee and the disclosure made in the accounts accompanying the return, no penalty is leviable."*

19. In view of what has been discussed and following the decisions rendered by Hon'ble Supreme Court, Hon'ble High

Court and coordinate Bench of the Tribunal discussed in the preceding paras, we are of the considered view that initiating penalty u/s 271(1)(c) of the Act on the basis of vague and ambiguous notice issued u/s 143 (2) of the Act is not sustainable in the eyes of law and that mere difference in the computation of book profit under bonafide mistake is not furnishing of inaccurate particulars of income particularly when assessee had filed balance sheet, profit & loss account showing all the capital gains and has subsequently rectified the mistake by filing revised return. So, the question framed is answered in the negative and penalty levied by the AO and sustained by the Id. CIT (A) is ordered to be deleted. Consequently, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 24th day of February, 2021.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 24th day of February, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-22, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**