

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA.Nos.5128, 5129, 5130 & 5131 /Del./2017
Assessment Years 2009-2010, 2010-11, 2011-12 & 2012-2013

M/s. Glory Lifesciences Pvt. Ltd., C-30, Panchsheel Enclave, New Delhi PIN - 110 017. PAN AADCG1069K	vs.	The ACIT, Central Circle-6, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri P.C. Yadav, Advocate.
For Revenue :	Shri Vipul Kashyap, Sr. D.R.

Date of Hearing :	01.04.2021
Date of Pronouncement :	06.04.2021

ORDER

PER BHAVNESH SAINI, J.M.

All the appeals by Assessee are directed against
the different Orders of the Ld. CIT(A)-24, New Delhi, Dated
29.06.2017, for the A.Ys. 2009-2010 to 2012-2013.

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

3. The assessee filed an application in all the years for admission of an additional ground of appeal which is common in all the appeals and reads as under :

“a) On the facts and under the circumstances of the case the penalty levied under section 271(1)(C) of the Act is void as the notice u/s 274 Read with Sec. 271 is bad and defective as it is issued without deleting the appropriate clause under which the penalty is proposed to be imposed is either for filling of inaccurate particular of income or concealment of particular of income and as such the notice is not sustainable and not curable.”

3.1. Learned Counsel for the Assessee placed on record copies of the show cause notice for each year issued under section 274 read with section 271(1)(c) of the I.T. Act,

1961, Dated 20.06.2014, before levy of the penalty in which the A.O. has mentioned as under :

“have concealed the particulars of your income or furnished inaccurate particulars of such income.”

3.2. Learned Counsel for the Assessee, therefore, submitted that since the additional ground is legal in nature and arise out of the record and no facts are disputed, therefore, same may be admitted for disposal of the appeal. He has relied upon judgment of the Hon’ble Supreme Court in the case of National Thermal Power Co. Ltd., vs., CIT 229 ITR 383 (SC).

4. On the other hand, the Ld. D.R. opposed for the admission of the additional ground of appeal.

5. After considering the rival submissions we are of the view that additional ground is legal in nature and goes to the root of the matter. The notice issued by the A.O. before levy of the penalty Dated 20.06.2014 (supra) is not disputed. Therefore, it being a legal issue challenging the levy of penalty under section 271(1)(c) of the I.T. Act,

therefore, we admit the additional ground in all the appeals for the purpose of disposal of the appeals.

6. Learned Counsel for the Assessee submitted that since the A.O. in the show cause notice issued before levy of the penalty Dated 20.06.2014 have mentioned both the limbs of Section 271(1)(c) of the I.T. Act for levy of the penalty, therefore, the show cause notices are invalid, bad in Law and defective and as such entire penalty proceedings are vitiated and are liable to be quashed on this reason alone.

7. On the other hand, the Ld. D.R. relied upon the Orders of the authorities below and submitted that A.O. has recorded proper satisfaction in the impugned orders. Therefore, penalty proceedings need not be cancelled.

8. We have considered the rival submissions. It is an admitted fact that before levy of the penalty A.O. has issued show cause notice Dated 20.06.2014 in all the years in which A.O. has mentioned both the limbs of Section 271(1)(c) of the I.T. Act that assessee have concealed the

particulars of your income or furnished inaccurate particulars of such income. Thus the A.O. has not mentioned as to for which limb of Section 271(1)(c) of the I.T. Act penalty shall have to be levied against the assessee. According to Section 274 of the I.T. Act, 1961 no order imposing a penalty under this Chapter unless the assessee has been heard or has been given a reasonable opportunity of being heard. The A.O. in order to give an opportunity of being heard to the assessee issued show cause notice Dated 20.06.2014 for all the assessment years. The Hon'ble Karnataka High Court in the case of CIT vs. M/s. SSAs Emerald Meadows 73 taxmann.com 241 confirmed the Order of the Tribunal by dismissing the Departmental Appeal in which the Tribunal has allowed the appeal filed by the assessee holding that notice issued by the A.O. under section 274 read with Section 271(1)(c) of the I.T. Act to be bad in Law and it did not specify under which limb of Section 271(1)(c) of the I.T. Act penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing inaccurate particulars of income. The

Judgment of the Hon'ble Karnataka High Court have been confirmed by the Hon'ble Supreme Court reported in 73 taxmann.com 248 (SC) by dismissing the SLP of the Department. Further, 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.) 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.”

8.1. Considering the issue in the light of above material it is clear that A.O. has issued invalid and defective notices under section 271(1)(c) of the I.T. Act read with Section 274 of the I.T. Act Dated 20.06.2014 before levy of the penalty. Therefore, entire penalty proceedings are vitiated and are liable to be quashed. In view of the above, we set aside the Orders of the authorities below and delete the entire penalty proceedings under section 271(1)(c) of the I.T. Act for the above assessment years. In view of the above, there is no need to decide the penalty matters on merits. Accordingly, all the appeals of the Assessee are allowed.

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

Order pronounced in the open Court.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 06th April, 2021

VBP/-

Copy to

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

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.