

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'G': NEW DELHI  
(Through Video Conferencing)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.3061/Del/2017  
Assessment Year : 2009-10**

**M/s Singh Consultancy Pvt.  
Ltd.  
1106 Indra Prakash Building,  
21 Barakhamba Road,  
New Delhi-110001  
PAN-AAKCS5550J**

**Vs. Income Tax Officer,  
Ward-8(4),  
New Delhi**

**(Appellant)**

**(Respondent)**

Appellant by : Sh. S.K. Gupta, CA  
Respondent by : Sh. H.K. Choudhary, CIT-DR

Date of hearing : 25.03.2021  
Date of pronouncement : 09.04.2021

**ORDER**

**PER R.K. PANDA, AM :**

This appeal filed by the assessee is directed against the order dated 23.12.2016 of the learned CIT(A)-22, New Delhi, relating to Assessment Year 2009-10.

2. Facts of the case, in brief, are that the assessee is private limited company, engaged in the business of share, commodity trading and investment activities. It filed its return of income on 29.09.2009, declaring loss of Rs.2,20,67431/-. The Assessing Officer completed the assessment under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') on 30.12.2011 determining total income of the assessee at Rs.26,39,389/-, wherein, he made addition of Rs.2,47,06,820/- treating unsecured loan of

Rs.2,47,06,820/- as bogus and ingenuine. The addition so made was confirmed by the learned CIT(A). Thereafter, the Assessing Officer initiated penalty proceedings u/s 271(1)(c) of the Act. Rejecting the various explanations given by the assessee and observing that the assessee has concealed its income to the extent of Rs.2,47,06,820/- willfully and knowingly by furnishing inaccurate particulars of income, he levied penalty of Rs.74,12,046/- being 100% of the tax sought to be evaded.

3. In appeal, the learned CIT(A) sustained the addition by observing as under:-

*“7.1. Non filing of complete details/information amounts to suppression of material facts. Order of CIT(A) reflects facts which are different from the statement of facts filed by the appellant. Finding of facts by CIT(A) has not yet been reversed by ITAT. The case laws relied upon by the appellant, do not hold that penalty is not leviable even when there is suppression of material facts. Therefore, the addition made falls under the definition of deemed concealment under explanation 1 to section 271(1)(c) of the I.T. Act. 1961. Therefore, the penalty levied is confirmed.”*

4. Aggrieved with such order of the learned CIT(A), the assessee is in appeal before the Tribunal by raising following grounds of appeal:-

1. *That the CIT(A) has erred in upholding the notice issued u/s 271(l)(c) and order passed under the said section imposing penalty of Rs. 74,12,046/- since the notice issued U/s 271 r.w.s. 274 and penalty order passed is illegal, bad in law and vague.*
2. *That no valid satisfaction was recorded before initiation of penalty and as such the notice issued u/s 271(l)(c) and penalty order dated 28.03.2014 imposing penalty of Rs 74,12,046/- passed under said section are illegal, bad in law and without jurisdiction and liable to be quashed.*

3. *That the penalty order is illegal, bad in law and without jurisdiction since the AO who has passed the order had no jurisdiction to pass the order.*
4. *That in the absence of any specific charge against the assessee, the initiation and levying of penalty U/s 271(l)(c) is illegal, bad in law and is liable to be quashed.*
5. *That the CIT(A) has erred in law and on facts in not appreciating that additions made by the A.O. in quantum proceedings on account of unsecured loan being treated as income do not attract penalty provisions.*
6. *That the CIT(A) has erred in law and on facts in not appreciating that addition of unsecured loan received by the appellant is a highly debatable and contentious issue and hence no penalty u/s 271(l)(c) can be levied.*
7. *That the penalty order u/s 271(l)(c) is against the well established norms and jurisprudence of penalty under the IT Act and against various decisions of ITAT, High Court and Supreme Court.*
8. *That the CIT(A) has grossly erred in holding that the appellant had suppressed material facts and has further erred in holding that the appellant is liable under Explanation 1 to Sec 271 .*
9. *That the explanations filed before the A.O and the material available on record has not been properly considered and legally interpreted. The penalty imposed cannot be justified by any material on record.*

5. The learned counsel for the assessee strongly challenged the order of the CIT(A) in confirming the penalty so levied by the Assessing Officer. Referring to the copy of the notice issued u/s 274 r.w.s. 271 of the Act by the Assessing Officer on 30.12.2011, which is placed at Sl. No.6 of soft copy, he submitted that the inappropriate words in the said notice have not been struck off and it is not clear as to under which limb of section 271(1)(c) penalty has been initiated i.e. for concealment of income or for furnishing of

inaccurate particulars of income. Referring to the copy of the assessment order, he submitted that the Assessing Officer is silent on particular limb of default attributable to the assessee. The order doesn't indicate any specific default of sec 271(1)(c) attributed to the assessee although there is general satisfaction of initiation of penalty proceedings in para 3.1 thereof. Referring to the copy to penalty order, he submitted that the Assessing Officer while levying penalty records satisfaction that the assessee knowingly and willfully by furnishing inaccurate particulars of income concealed its income. He submitted that from the satisfaction in penalty order, there cannot be any dispute that the assessee is in default for furnishing of inaccurate particulars of income and no default for concealing the particulars of income is attributable to the assessee, although, the Assessing Officer finds that this default has resulted into concealment of income. He submitted that invoking of the Explanation of section 271(1)(c) across the board further shows non-application of mind by the Assessing Officer. Referring to the various decision including the decision of the Hon'ble Supreme Court in the case of CIT vs SSA's Emerald Meadows reported in 73 taxmann.com 248 and CIT vs Manjunatha Cotton & Ginning Factory reported in 359 ITR 565 (Kar) and the decision of the Delhi High Court in the case of Pr. CIT vs M/s Sahara India Life Insurance Company in ITA No.475, 426, 427 and 429/2019, order dated 02.08.2019 and various other decision, he submitted that the penalty levied by the Assessing Officer has been canceled on the ground of non-specification of the particular limb of default covered by the penal provision of sec 271(1)(c) of the Act. Referring to the following decisions, he submitted that where the particular

limb has not been mentioned by the Assessing Officer under which the penalty has been levied, the penalty proceedings have been quashed:-

- i. CIT v. Samson Perinchery 392 ITR 4 (Bombay);
- ii. Manu Bali v. ACIT [ITA/790/DEL/2016; decision dated 05.10.2017];
- iii. Vijay Agarwal v. DCIT [ITA/5432/DEL/2016; decision dated 05.11.2019];
- iv. Sanjay Mitra vs. DCIT [ITA No.5206/Del/2016, order dated 01.10.2018];
- v. DCIT vs. Gellette Diversified Operations Pvt. Ltd. [ITA No.4585/Del/2015] and vice versa [ITA No.3238/Del/2015], order dated 25th April, 2019 for A.Y. 2011-12.

6. He further submitted that a perusal of the assessment order shows that while making addition of Rs.2,47,06,820/-, there is no satisfaction whatsoever of the default committed within the meaning of section 271(1)(c) and the relevant limb of default appears in the assessment order. He submitted that recording of satisfaction is sine qua-non for valid initiation of penalty proceedings which is evident from the wording of sec 271(1) of the Act which places emphasis on the satisfaction by the AO while initiating penalty proceedings. He submitted that in absence of any satisfaction of recording nature of default by the AO in the assessment order qua this addition, the penalty cannot be imposed on such addition. Referring to the

decision of the Hon'ble Delhi High Court in the case of Madhushree Gupta vs Union of India reported in 317 ITR 143(Del), he submitted that Hon'ble High Court in the said decision has held that the presence of prima facie satisfaction for initiation of penalty proceedings was and remains a jurisdictional fact which cannot be wished away as the provision stands even today, i.e post amendment. Relying on various other decisions, he submitted that where it is mentioned that penalty proceedings u/s 271(1)(c) of the Act are initiated separately, it is held that the same doesn't comply with the word 'direction' as contemplated under section 271(1)(c) of the Act.

7. The learned counsel for the assessee submitted that penalty has been levied for concealment of particulars of income of Rs.2,47,06,820/- for which addition has been made u/s 68 of the Act. Referring to para-3 of the assessment order, he submitted that the Assessing Officer simply relies on the finding given in the assessment order for AY 2008-09. This shows that the Assessing Officer has not conducted any enquiry to verify the evidences furnished by the assessee in support of the cash credit of Rs.2,47,06,820/- for this year. Thus, the addition is not based on the rejection of the evidences furnished after due enquiry by the Assessing Officer. Therefore, such addition is not tenable in law in view of the following decisions:-

- i. CIT vs. Goel Sons Golden Estate Pvt Ltd. ITA 212/2012 (Del);
- ii. Pr. CIT Vs Laxman Industrial Resources Ltd in 397 ITR 106 (Del);
- iii. Pr. CIT vs. Green Valley Plywood Limited (ITA No. 358/2016 (Del);
- iv. Pr. CIT vs Rakam Money Matters Pvt Ltd ITA 778/2015 (Del);

v. CIT vs M/s Russian technology Centre (P) Ltd 300 CTR 0501 (Del).

8. He submitted that the Assessing Officer in the penalty order, failed to support the charge of furnishing of inaccurate particulars without identifying which of the particulars filed by the assessee regarding the cash credit were inaccurately furnished in the absence of enquiry conducted by him. He submitted that the assessee during the assessment proceedings had furnished the required evidences in support of the cash credit. The details furnished by the assessee during the assessment proceedings was not found to be unsubstantiated and there is no question of the same not being bona-fide and all the details regarding the acceptance of credit were furnished before the Assessing Officer and therefore, it cannot be said that it is a case of furnishing of inaccurate particulars of income. Relying on various decisions, he submitted that although the addition has attained finality in quantum proceedings, the assessee can always make a new plea during the penalty proceedings. He, accordingly, submitted that both legally and factually penalty so levied by the Assessing Officer and sustained by the learned CIT(A) is not justified.

9. Learned DR, on the other hand, strongly supported the order of the Assessing Officer and the CIT(A). He submitted that the Assessing Officer has initiated penalty proceedings after recording satisfaction. Referring to the copy of the notice issued u/s 274 r.w.s 271 of the Act on 30.12.2011, he submitted that there is tick mark against "have concealed the particulars of income or furnished inaccurate particulars of such income in terms of Explanation 1, 2, 3, 4 and 5". This shows that Assessing Officer has put the

tick mark for concealment of particulars of income, therefore, the argument of the learned counsel for the assessee that the Assessing Officer has not mentioned under which limb of section 271(1)(c) of the Act, penalty has been levied is not correct. He submitted that the addition has attained finality and the Assessing Officer has validly initiated the penalty proceeding, therefore, such order levying penalty by the Assessing Officer and sustained by the CIT(A) should be upheld.

10. We have considered the rival arguments made by both the sides, perused the orders of Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We find that the Assessing Officer in the instant case levied penalty of Rs.74,12,046/- being 100% of tax sought to be evaded on the ground that the assessee has concealed its income to the tune of Rs. 2,47,06,820/- willingly and knowingly by furnishing inaccurate particulars of income. We find that the learned CIT(A) upheld the penalty so levied by the Assessing Officer, reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the learned counsel for the assessee that since the inappropriate words in the said notice has not been struck off, therefore, it is not clear as to under which limb the penalty u/s 271(1)(c) has been initiated. A perusal of the notice issued u/s 274 r.w.s. 271 issued by the Assessing Officer shows that the Assessing Officer has simply put a tick mark against "have concealed the particulars of income or furnished inaccurate particulars of such income in terms of Explanation 1,2,3,4 and 5". A perusal of the assessment order shows that penalty has been initiated in general terms and the assessment



order is not clear as to under which limb of the penalty i.e. for concealment of income or for furnishing inaccurate particulars of income has been mentioned. Similarly, in the case of penalty order, where it is mentioned that assessee has concealed its income to the tune of Rs.2,47,06,820/- willingly and knowingly by furnishing inaccurate particulars of income. We, therefore, find merit in the arguments of the learned counsel for the assessee that in order to initiate penalty proceedings, the Assessing Officer has to specify in the show-cause notice u/s 271(1)(c) r.w.s 274 of the Act, if the assessee has concealed the particulars of income or has furnished inaccurate particulars of income which is in instant case, the Assessing Officer has failed to do. The Hon'ble Apex Court in the case of CIT vs SSA's Emerald Meadows reported in 73 taxmann.com 248, while dismissing the SLP filed by the Revenue quashing the penalty by the Tribunal as well as by the Hon'ble Delhi High Court on the ground that the penalty notice does not specify under which limb the penalty has been levied 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 1TR 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]”*

11. 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 of 2016 by order dated 5th August, 2016.”*

12. Following the decisions rendered in the cases of CIT vs. Manjunatha Cotton and Ginning Factory, CIT vs. SSA's Emerald Meadows and Pr. CIT vs. Sahara India Life Insurance Company Ltd. (supra), the Co-ordinate Benches of the Tribunal are taking the consistent 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 penalty notice has been issued, the penalty proceedings initiated u/s 271(1)(c) are not sustainable.

13. Respectfully following the decisions cited above, we hold that since, the particular limb under which the penalty has been levied is not coming out from the notice as well as the assessment order and penalty order,

therefore, such levy of penalty under these facts and circumstances is not justified. Accordingly, we set aside the order of the CIT(A) and direct the Assessing Officer to delete the penalty so levied.

14. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 09.04.2021

**Sd/-**

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

**Sd/-**

**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

Delhi/Dated-09.04.2021

*Shekhar*

Copy forwarded to: -

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

By Order

Assistant Registrar,  
ITAT, Delhi