

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 2033/DEL/2017 (A.Y 2009-10)
(THROUGH VIDEO CONFERENCING)**

Jamnalal Bajaj Foundation C/o. Bajaj Auto Ltd. B/60-61, Naraina Industrial Area, Phase-II, New Delhi AAATJ0402B (APPELLANT)	Vs	DCIT(E) Circle-1(1), Room No. 2418, 24 th Floor, E-2, Pratyaksh Kar Bhawan, Civic Centre, J. L. Nehru Marg, New Delhi (RESPONDENT)
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Appellant by	Ms. Vasanti Patel, Adv, Sh. Mahender Govil, CA
Respondent by	Sh. Munish Kumar, CIT DR

Date of Hearing	12.08.2021
Date of Pronouncement	03.09.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 01/02/2017 passed by CIT(A)-40, New Delhi for assessment year 2009-10.

2. The grounds of appeal are as under:-

“1. PENALTY UNDER SECTION 271(1)(C) OF THE ACT RS. 5,39,56,443/-:

1.1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) [CIT (A)] erred in confirming the Order of the learned Assessing Officer, imposing/ levying penalty under Section 271(l)(c) of the Act at Rs. 5,39,56,443/- on the ground that the appellant had

furnished inaccurate particulars of income and thereby concealed income in respect of alleged wrong claim of deemed income under Section 11(3) of the Act.

1.2 The learned CIT (A) and the learned Assessing Officer failed to appreciate the legal position emerging from and rule of law laid down in various judicial pronouncements and the submissions made/explanation offered by the appellant.

1.3 It is submitted that the Notice under Section 274 read with Section 271(l)(c) of the Act issued by the Ld. Assessing Officer does not indicate the specific charge for which penalty p,, mgs were initiated. It is submitted that the Order imposing penalty u/section 271(l)(c) is vitiated and may accordingly be quashed / struck/ b / set aside as bad in law and without jurisdiction. The appellant prays that penalty imposed by the Ld. Assessing Officer and confirmed by the CIT(A) may kindly be cancelled/deleted as the same is unwarranted, unjustified and bad in law.

3. The return of income declaring NIL income was filed on 30/09/2009 by the assessee. The assessee is registered u/s 12A of the Income Tax Act, vide order dated 22/5/1976 and was also allowed the benefit of 80G (5)(vi). Subsequently, the case was selected for scrutiny. During the pendency of scrutiny assessment, the assessee filed revised return on 24/3/2011 and income of Rs. 18,87,107/- was declared and taxes thereon was paid. The reason for revising the return as submitted by the assessee was that out of surplus accumulated u/s 11(2), a sum of Rs. 20 crores was utilized for granting donations to other charitable trust of the Institutions. The assessment was completed u/s 143(3) of the Income Tax Act, 1961 on 19/2/2011 at an income of Rs. 19,02,18,230/-, with reference to the assessment order, the penalty proceedings u/s 271(1)(c) were initiated in the course of assessment proceedings. Show Cause u/s 271(1)(c) read with Section 274 of the Income Tax Act, 1961 dated 19/12/2011 was issued and served upon the assessee further

noticed dated 3/3/2014 was also issued to the assessee. In response to the notice the Authorized Representative of the assessee vide letter dated 12/3/2014 submitted the reply thereby relying on the decision of the Hon'ble Supreme Court in case of CIT Vs. Reliance Petro Product Pvt. Ltd. 322 ITR 158 (S.C) contending therein that penalty u/s 271(1)(c) is not leviable as it has not concealed any facts nor it has furnished any inaccurate particulars of income. The Assessing Officer held that the assessee made wrong claim in respect of taxable income thereby furnished inaccurate particulars of income and concealed its income within the meaning of Section 271(1)(c) of the Income Tax Act, 1961.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The dismissed the appeal of the assessee.

5. The Ld. AR submitted that neither the assessment order for the relevant assessment year nor any letter or assessment order itself alleged that the provisions of Section 271(1)(c) are attracted in the case of assessee. The Ld. AR submitted that there is no satisfaction recorded in the assessment order itself for imposing the penalty on a particular limb as has been set out in the relevant Section of the Act. The revised return was duly submitted before the Assessing Officer during the course of assessment proceedings, the revised return was filed as the assessee noticed that during the Financial Year ended 31st March, 2009 a sum of Rs. 20 crores has been transferred from the credit balance in income and expenditure account to the trust fund account. The balance in trust fund account along with the amount transferred from the income and expenditure account was utilized for grant corpus donation to the other charitable trusts. During the earlier years, the assessee had exercised the option for accumulation u/s 11(2) of the Act and the service was accumulated for the charitable objects of the trust as under:-

Sr. No.	Assessment Year	Amount
1	2006-07	4,66,00,000/-
2	2007-08	10,50,00,000/-
3	2008-09	10,00,00,000/-
	TOTAL:	25,16,00,000/-

While granting the donations to other charitable trust, the surplus accumulated u/s 11(2) of the Act as discussed above got utilized to the extent of Rs. 20 Crores, thus, the Provisions of Section 11(3) (c)/11(3) (d) of the Act got attracted. In view of the above, the assessee computed revised return of income under revised statement of computation of total income for the above year and has offered to tax the said deemed income u/s 11(3) of the Act. The Ld. AR further pointed out that the assessee also paid the tax of Rs.7,75,69,270/- payable as per the said revised statement of computation of total income. The Ld. AR submitted that the assessee has filed the revised return of income for the present Assessment Year on its own account and voluntarily being pointed out by the AO in any notice in this behalf. Thus, the assessee trust has made bonafide claim and all relevant facts were fully disclosed. The Ld. AR relied upon the decision of the Hon'ble Supreme Court in case of Reliance Petro Products Ltd. (2010) 322 ITR 158. The Ld. AR also relied upon the following decisions:-

- ❖ CIT VS. Reliance Petro products Pvt. Ltd. (2010) 322 ITR 158 (SC)
- ❖ CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 35 Taxmann.com 250 (Karnataka)/(2015) 359 ITR 565.
- ❖ Ventura Textiles Ltd Vs. CIT (2020) 426 ITR 478/117 Taxmann.com 182
- ❖ Pr. CIT Vs. Neeraj Jindal (2017) 79 Taxmann.com 96 (Delhi)/393 ITR 1
- ❖ Pr. CIT Vs. Samtel India Ltd. (2018) 168 DTR (Del) 322
- ❖ Shri Omprakash T. Mehta Vs. ITO

- ❖ M/s. Balaji Telefilms Ltd. Vs. DCIT
- ❖ Dy CIT Vs. M/s National Textile Corporation Ltd.
- ❖ Asstt. CIT Vs. Ashok Raj Nath (2012) 19 ITR (Trib) 70 (Delhi)
- ❖ Mrs. Manjeet Kaur Saran Vs. DCIT
- ❖ Kailash Chander Malhotra HUF Vs. ACIT
- ❖ Prafull Industries (P) Ltd. Vs. DCIT

6. The Ld. DR relied upon the assessment order and the order of the CIT(A) and the penalty order.

7. We have heard both the parties and perused the material available on record. First of all, in the notice issued u/s 274 r.w.s 271(1)(c) of the Income Tax Act, 1961, there was no specific charges as relates to concealment of income or furnishing of inaccurate particulars of income. From the notice dated 19/12/2011 produced by the Ld. AR during the hearing, it can be seen that the Assessing Officer was not sure under which limb of provisions of Section 271(1)(c) of the Income Tax Act, 1961, the assessee is liable for penalty. Besides that the Assessment Order also did not specify the charge as to whether there is concealment of income or furnishing of inaccurate particulars of income in assessee's case. The notice issued u/s 271 (1)(c) read with Section 274 was not as per the prescribed provisions of penalty envisaged in Income Tax Act. This issue is squarely covered by the decision of the Hon'ble Supreme Court in case of M/s SSA' Emerald Meadow. The extract of the decision of the Hon'ble Karnataka High Court in M/s SSA' Emerald Meadows are as under which was confirmed by the Hon'ble Apex Court:

"3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short '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. The Tribunal, while

allowing the appeal of the assessee, has relied on the ITA No. 4913/Del/2015 decision of the Division Bench of this Court rendered in the case of COMMISSIONER OF INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565.

4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed."

Thus, Additional Ground No. (ii) of the assessee's appeal is allowed. Since the inception of the notice issued u/s 271(1)(c) has become null and void, there is no need to comment on merit of the case. The Penalty u/s 271(1)(c) of the Act is quashed."

7.1. Since in the instant case also the inappropriate words in the penalty notice has not been struck off and the notice does not specify as to under which limb of the provisions, the penalty u/s 271(1)(c) has been initiated, therefore, we are of the considered opinion that the penalty levied u/s 271(1)(c) is not sustainable and has to be deleted. Although the Ld. DR submitted that mere non-striking off of the inappropriate words will not invalidate the penalty proceedings, however, the decision of the Hon'ble Karnataka High Court in the case of SSA'S Emerald Meadows (supra) where the SLP filed by the Revenue has been dismissed by Hn'ble Apex Court is directly on the issue contested herein by the Assessee. Further, when the notice is not mentioning the concealment or the furnishing of inaccurate particulars, the ratio laid down by the Hon'ble Delhi High Court in case of M/s. Sahara India Life Insurance Company Ltd. (supra) will be applicable in the present case. The Hon'ble Delhi High Court 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.”

7.2. On merit, the penalty was imposed thereby observing that the assessee made wrong claim in respect of taxable income thereby furnished inaccurate particulars of income and concealed its income within the meaning of Section 271(1)(c) of the Income Tax Act, 1961. The Hon'ble Apex Court in case of Reliance Petroproducts Pvt. Ltd. (Supra) held as under:

“18. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.

19. It was tried to be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are

incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income.

20. *We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the Legislature.”*

Thus, in the present case the assessee has not furnished inaccurate particulars of income as the revised return was filed during the course of assessment proceedings before being pointed out by the AO in the notice u/s 142(1) & 143(2). The assessee has claimed the statutory deductions/exemptions only. Thus, the present case is squarely covered by the Hon'ble Apex Court decision and Section 271(1)(c) will not be attracted in the present case. Thus, the Assessing Officer was not right in imposing the penalty and the CIT(A) also ignored the crucial facts of the present case. Hence, appeal filed by the assessee is allowed.

8. In result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on this 03rd Day of September, 2021.

Sd/-

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

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 03/09/2021
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI