

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 5116/DEL/2018 (A.Y 2010-11)

&

I.T.A. No. 5117/DEL/2018 (A.Y 2014-15)

(THROUGH VIDEO CONFERENCING)

Trasngulf Frozen Foods Containers Pvt. Ltd. Akhishlesh Kumar, Advocate Chamber No. 206-207, Ansal Satyam, RDC Raj Nagar, Ghaziabad, Uttar Pradesh AACCT2067R (APPELLANT)	Vs	ACIT Circle-2 Ghaziabad (RESPONDENT)
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Appellant by	Sh. Pushkar Pandey, Adv & Ms. Ishita Gupta, CA
Respondent by	Sh. Prakash Dueby, Sr. DR

Date of Hearing	14.09.2021
Date of Pronouncement	28.09.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the order dated 16/05/2018 & 31/05/2018 passed by CIT(A)-Ghaziabad for assessment year 2010-11 & 2014-15 respectively.

2. The grounds of appeal are as under:

I.T.A. No. 5116/DEL/2018 (A.Y 2010-11)

"1. Because, the order of leaned Commissioner Of Income Tax (A) is bad in law and against the facts and circumstances of the case as neither there is

any concealment nor assessee has filed any inaccurate particulars.

2. Because, the learned Commissioner Of Income Tax (A), grossly erred in sustaining the penalty of Rs. 7,56,000/- imposed u/s 271(1) (C) of the Act without appreciating-the fact that the lump sum addition is made by applying flat rate that too by admittingly by applying wrong provision in whole disregard of facts on records like better book results and factually there is no specific item/transaction/material which is found wrong/ concealed, hence order is arbitrary.

3. Because, without prejudice to above and in alternative, penalty is without any application of mind/satisfaction against the ratio of law laid down in case of Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565(Kamatka) approved by hon'ble Apex Court in case of SSA's EMERALD MEADOWS as the same is initiated by way of a printed penalty notice, without specifying any specific default either of concealment or furnishing inaccurate particulars.

I.T.A. No. 5117/DEL/2018 (A.Y 2014-15)

1. "Because, the learned Commissioner Of Income Tax (A), grossly erred in sustaining the penalty of Rs. 81,900/- imposed u/s 271(1)(C) of the Act without appreciating the fact that the non disallowance u/s 40(a)(ia) was brought to the notice of Id. AO voluntarily by assessee and added to income without detection by AO proving non-existence of any deliberateness on the part of assessee.

2. Because, in addition to above, assessee had disclosed all the facts relating to computation of income and in terms of binding decision of hon'ble jurisdiction high court no disallowance u/s 40(a)(ia) was possible at the relevant time and in any eventuality issue was highly debatable.

3. Because, without prejudice to above and in alternative, penalty is without any application of mind/satisfaction against the ratio of law laid down in case of Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565(Kanatka) approved by hon'ble Apex Court in case of SSA's EMERALD MEADOWS as the same is initiated by way of a printed penalty notice, without specifying any

specific default either of k/concealment or furnishing inaccurate particulars. Therefore, penalty of Rs. 81,900/- imposed u/s 271(1)(c) is prayed to be quashed.

3. Both the appeals are on identical facts, therefore, we are taking up the facts of A.Y. 2010-11. The return of income for Assessment Year 2010-11 was filed on 2.10.2010 declaring loss of Rs, 82,33,103/-. The case was selected for scrutiny. The assessment in this case was completed u/s 143(3) on 25.03.2013 total income at Nil against net loss of Rs. 82,33,203/-. During assessment proceedings, the then Assessing Officer observed that business results furnished by the assessee have not been found to be reliable, books of accounts has not been found to be reliable, and rejected books of account invoking Section 145(3). The Assessing Officer worked out the business Income of the assessee by applying the provisions of Section 44AE and made addition of Rs. 25,20,000/- in income of the assessee. The penalty proceedings u/s 271(1)(c) of the I.T Act, 1961 were also initiated in this case. The Assessing Officer issued notice dated 25.03.2013 u/s 274 r.w.s. 271(1)(c) of the Act. The Assessing Officer passed penalty order dated 28.03.2017 thereby imposing penalty of Rs. 7,56,000/- in A.Y. 2010-11.

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

5. The Ld. AR submitted that the notice dated 25.03.2013 has not given a specific charge for penalty. The Ld. AR submitted that the CIT(A) erred in confirming the penalty u/s 271(1)(c) of the Act as under which limb of Section 271(1)(c), the penalty is levied was not mentioned in the notice issued under Section 271(1)(c) read with Section 274 of the Act. The Ld. AR submitted that whether the penalty is for concealment of income or furnishing of inaccurate particulars of income was not evident from the notice nor from the penalty order as well. The Ld. AR further submitted that the penalty provision being

quasi judicial, unless there is specific charge there cannot be levy of penalty. Therefore, the order levying penalty is wrong and bad in law. The Ld. AR relied upon the decision of the Hon'ble Supreme Court in case of CIT vs. SSA's Emerald Meadows (2016) 73 Taxman.com 248 (SC) and CIT v. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Kar). The Ld AR further submitted that the Hon'ble Delhi High Court in case of Pr. CIT Vs. M/s. Sahara India Life Insurance Company Ltd. (ITA No.475/2019 vide order dated 02.08.2019) held that notice issued by the Assessing Officer would be bad in law if it did not specify which limb of Section 271(1)(c) of the penalty proceedings had been initiated. The Ld. AR further submitted that the Assessing Officer made an addition of Rs. 25,20,000/- in the income of the assessee company estimating the income from Truck Operation on the basis of the provisions given u/s 44AE of the Act i.e. @ Rs. 3500 per month per truck. The CIT(A) in quantum appeal observed that the provisions of Section 44AE are not applicable to the assessee, still confirmed the additions. The assessee has not filed appeal as to avoid litigation and to buy peace of mind. The Ld. AR submitted that this does not contemplate that the assessee has concealed the particulars of income or furnished the inaccurate particulars of income as per the provisions of Section 271(1)(c) of the Act.

6. The Ld. DR submitted that the penalty order is very clear that the penalty is imposed on concealment of income and, therefore, merely not mentioning the specific limb of Section 271(1)(c) will not make the penalty order bad in law. The Ld. DR relied upon the Assessment Order, Penalty order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant materials 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 25.03.2013 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 of the Income Tax Act, 1961, the assessee is liable for penalty. Besides this, the present case is relating to an addition of Rs. 25,20,000/- in the income of the assessee company estimating the income from Truck Operation on the basis of the provisions given u/s 44AE of the Act i.e. @ Rs. 3500 per month per truck. The CIT(A) in quantum appeal observed that the provisions of Section 44AE are not applicable to the assessee, but confirmed the additions. For not filing the appeal cannot be said that it is concealment of income or furnishing of inaccurate particular of income. In fact, 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. Thus, there is no particular limb mentioned in the notice issued under Section 271(1)(c) r.w.s. 274 of the 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."

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 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 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.”

Thus, notice under Section 271(1)(c) r.w.s. 274 of the Act itself is bad in law. We, therefore, set-aside the order of the CIT(A) and direct the Assessing Officer

to cancel the penalty so levied. Thus, ITA No. 5116/DEL/2018 for A.Y. 2010-11 is allowed.

8. Since ITA No. 5117/DEL/2018 for A.Y. 2014-15 is also on identical grounds to that of ITA No. 5116/DEL/2018 for A.Y. 2010-11, the same is also allowed.

8. In result, both the appeals of the assessee are allowed.

Order pronounced in the Open Court on this 28th Day of September, 2021

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 28/09/2021

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

