

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "F": NEW DELHI]**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
A N D
SHRI AMIT SHUKLA, JUDICIAL MEMBER
(Through Video Conferencing)**

ITA. No. 4991/Del/2011
(Assessment Year: 2006-07)

M/s. Proform Interiors Pvt. Ltd., (Formerly known as M/s. Sharmillee Furnishings Pvt. Ltd.) (Ground Floor), JMD Regent Plaza, M. G. Road, Gurgaon, Haryana - 122 001. PAN: AAHCS5999J	Vs.	Assistant Commissioner of Income Tax, Circle : 8 (1), New Delhi.
(Appellant)		(Respondent)

Assessee by :	Ms. Lalitha Krishnamurthy, Advocate;
Department by :	Shri Atiq Ahmed, Sr. D. R.;
Date of Hearing :	23/02/2022
Date of pronouncement :	28/02/2022

ORDER

PER ANIL CHATURVEDI, A. M.

1. The aforesaid appeal has been filed by the assessee against the impugned order dated 14.03.2011 passed by the Commissioner of Income Tax (Appeals)-XI, New Delhi (hereinafter referred to [CIT (Appeals)], for assessment year 2006-07.

2. Brief facts of the case as culled out from the material on record are as under:-

The assessee is a company stated to be engaged in the business of manufacturing of furniture. Assessee filed its return of income for assessment year 2006-07 on 28.11.2006 declaring total income of Rs.25,87,136/-. The case was selected for scrutiny and thereafter assessment was framed under Section 143(3) of the Income Tax Act, 1961 (the Act) vide order dated 26.12.2008 and the total taxable income was determined at Rs.2,36,42,637/- *inter alia* by making the following disallowances:-

1. Trading Account	50,00,000/-
2. Foreign Travel	16,15,413/-
3. Interest capitalized in WIP	17,24,325/-
4. Depreciation on building	5,28,425/-
5. Interest capitalized-building construction.	22,99,100/-
6. On account of purchases / Sales not proved.	98,88,238/-

3. Aggrieved by the order of Assessing Officer, assessee carried the matter before the CIT (Appeals) who deleted the addition on account of purchases amounting to Rs.98,88,238/- but confirmed the rest of the disallowances. On the disallowances that were confirmed by CIT(A) Assessing Officer vide penalty order passed under Section 271(1)(c) of the Act dated 8.03.2010 levied penalty of Rs.37,58,900/-.
4. Aggrieved by the penalty order of Assessing Officer assessee carried the matter before the CIT (Appeals) who vide order dated

14.03.2011 in Appeal No.3/10-11 dismissed the appeal of the assessee.

5. Aggrieved by the order of the CIT (Appeals) assessee is now in appeal before us and has raised the following grounds:-

“1. That the Id. Commissioner of Income Tax (Appeals) has erred in sustaining the penalty imposed under Section 271(1)(c) of the Income Tax Act, 1961 of Rs.37,58,900/-.

2. That the penalty of Rs.37,58,900/- as levied by Id. AO under Section 271(1)(c) of the Income Tax Act, 1961 and sustained by Id. CIT (Appeals) is arbitrary, unjust and not tenable under the law on various factual and legal grounds. “

6. Before us, at the outset, Id. AR submitted that the sole controversy is with respect to levy of penalty under Section 271(1)(c) of the Act.
7. The Id. AR submitted that during the course of assessment proceedings Assessing Officer had levied penalty on the various additions. However, she submitted that in the penalty order passed by the Assessing Officer no satisfaction has been recorded by the Assessing Officer with respect to the disallowance of Rs.16,15,413/- made on account of travel expenses. She submitted that Assessing Officer has not stated as to whether on the addition of disallowance of travel expenses on which the penalty has been levied was a case of furnishing of inaccurate particulars of income or was a case of concealment of income. In support of her contention she pointed to the order of the AO and submitted that there is no mention in the AO's order about the levy of penalty on the disallowance of travelling expenses. On the merits she submitted that during the course of assessment proceedings assessee furnished the ledger

account of the foreign travel expenses but Assessing Officer had proceeded to disallow expenses for the reasons stated in the order. She further pointing to the notice u/s 274 r.w.s 271(1)(c) of the Act submitted that the notice does not indicate on what ground the penalty is sought to be imposed i.e. whether for concealment of income or for furnishing of inaccurate particulars of income. She, therefore, submitted that no penalty is leviable when in the absence of proper satisfaction recorded by Assessing Officer. She also submitted that mere disallowance of expenses claimed would not attract penalty under Section 271(1)(c) of the Act and for the aforesaid proposition she relied upon the decision of Hon'ble Supreme Court in the case of **CIT Vs. Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 (SC)**. She, therefore, submitted that penalty at the same time had to be deleted.

8. The ld. DR, on the other hand, supported the orders of the lower authorities.
9. We have heard the Learned DR and perused the material on record. The issue in the present ground is with respect to the upholding of levy of penalty u/s 271(1)(c) of the Act by CIT(A). The AO has levied penalty u/s 271(1)(c) of the Act on the additions made by him and upheld by CIT(A). As per the provisions of Section 271(1)(c), if the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under the Act is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct such person shall pay by way of penalty, in addition to the tax payable by him, a sum which shall not be less than

but which shall not exceed three times the amount of tax sought to be evaded by reason of concealment of particulars of his income or furnishing of inaccurate particulars of such income. Thus the two key expressions which comprises of two limbs for imposition of penalty u/s 271(1)(c) of the Act are “concealment of particulars of his income” & “furnishing inaccurate particulars of such income”. It is a settled law that while levying penalty for concealment, the AO has to record satisfaction and thereafter come to a finding in respect of one of the limbs which is specified u/s 271(1)(c) of the Act, namely, whether the assessee has concealed the income or furnished inaccurate particular of income. Thus the first step is to record satisfaction and come to a finding while completing the assessment as to whether the assessee has concealed its income or furnished inaccurate particulars of income. The AO thereafter has to levy penalty u/s 271(1)(c) of the Act for non-satisfaction of either of the limbs which gets attracted. Thereafter, notice u/s 274 r.w.s 271(1)(c) of the Act is to be issued to the assessee. The aforesaid notice should specifically indicate on what ground penalty is sought to be imposed, whether for concealment of income or for furnishing of inaccurate particulars of income. In the present case, the perusal of assessment order passed by the AO reveals that in the assessment order, no specific finding has been recorded by the AO as to whether it is a case of concealment of income or a case of furnishing of inaccurate particulars of income. Further in the notice dated 26.12.2008 issued u/s 274 r.w.s 271 of the Act, the copy of which is placed at page 115A of the paper book, the inapplicable portion or limb of section 271(1)(c) of the Act has not been struck off. It is a settled law that the two limbs i.e.

“concealment of particulars of income” and “furnishing of inaccurate particulars of income” carry different connotations. Various High Courts have held that AO must indicate in the notice for which of the two limbs he proposes to impose the penalty and for this the notice has to be appropriately marked. If in a printed format of the notice the inapplicable portion is not struck off thus not indicating for which limb the penalty is proposed to be imposed, it would lead to an inference as to non application of mind, thus vitiating imposition of penalty.

10. We find that Hon’ble Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd. (2021) 432 ITR 84 (Del), after considering the decision in the case of CIT vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Kar) & CIT vs. SSA’s Emerald Meadows (2016) 73 Taxman.com 241 (Kar) [where the SLP filed by Revneue was dismissed and reported in (2016) 386 ITR (ST) 13 (SC)] has held that penalty u/s 271(1)(c) was not leviable when the notice issued by AO did not specify as to whether the proceedings were initiated for concealment of particulars of income or for furnishing of inaccurate particulars of income. The relevant portion of the findings of Hon’ble High Court in the case of Sahara India Life Insurance Co. Ltd. (supra) reads 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.”

11. Before us, Revenue has not placed any material on demonstrate that the aforesaid decision of Hon'ble Delhi High Court in the case of Sahara India Life Insurance Co. Ltd. (supra) has been stayed/ set aside/ overruled by higher judicial forum. Considering the totality of the aforesaid facts and relying on the aforesaid decision in the case of Sahara India Life Insurance Co. Ltd. (supra), we are of the view that the AO was not justified in levying penalty u/s 271(1)(c) of the Act. We accordingly set aside the levy of penalty levied by AO and **thus the ground of assessee is allowed.**

12. **In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on : **28/02/2022.**

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated : 28/02/2022.

MEHTA

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi.