

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'E': NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No:- 5826 & 5827/Del/2016  
(Assessment Years: 2009-10 & 2010-11)**

Mahaluxmi Realtech Pvt. Ltd., KJ-2, Kavi Nagar, Ghaziabad.	Vs.	DCIT, Central Circle, Ghaziabad.
<b>PAN No:</b> AAECM7407Q		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : Shri Ajay Wadhwa, Adv.  
Ms. Aayushi Gupta, Adv. and  
Ms. Airik Sighla, Adv.  
**Revenue by** : Shri Mritunjay Prashad Dwivedi, Sr.DR  
**Date of Hearing** : 21.11.2023  
**Date of Pronouncement** : 23.11.2023

**ORDER**

**PER N.K. BILLAIYA, AM**

ITA No. 5826/Del/2016 and 5827/Del/2016 are two separate appeals by the assessee preferred against two separate orders of the CIT(A)-IV, Kanpur, dated 16.09.2016 pertaining to AYs. 2009-10 and 2010-11.

2. The common grievance on both appeals relates to the levy of penalty U/s 271(1)(c) of the Act. Since the underlying facts are identical in both the appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. Representatives of both the sides were heard at length. The case records carefully perused and the relevant documentary evidences brought on record duly considered in the light of Rule 18(6) of the ITAT Rules.

4. Briefly stated the facts of the case are that a search and seizure operation u/s 132 of the Act was conducted on 12.02.2013 on the premises of the assessee comprising Mahaluxmi Group of cases. Accordingly statutory notices were issued and served upon the assessee pursuant to which the assessee filed its return of income.

5. Previously in this case, assessment u/s 143(3) r.w.s. 147 was completed on 06.05.2013 at total income of Rs. 1.24 crores by the AO, Ghaziabad. The operative part of the said assessment order read as under:

*"A survey operation u/s 133A of the I.T.Act 1961 was conducted on 12-02-2013 in the case of M/S Mahalaxmi Buildtech Ltd at C-2, RDC, Raj Nagar, Ghaziabad, which was subsequently converted into search operation*

*u/s 132 of the Act. During the course of Survey and Search operation in the aforementioned case, certain incriminating documents relating to the case of M/S Mahalaxmi Real Tech Pvt. Ltd have been found, which reveals that M/S Mahalaxmi Real Tech Pvt. Ltd has purchased share capital of Rs.1.24 Crore in F.Y. 2008-09 in cash.*


*Therefore, the case of the assessee company has been reopened by invoking provisions of section 147 of the Act. The assessee company vide its letter and return filed in response to the notice u/s 148 of the Act. has surrendered the amount of Rs. 1.24,00.000/- on account of share capital purchased in F.Y. 2008-09 by the assessee company. During the course of assessment proceedings, it has been observed that during the year, the assessee company has raised its capital by Rs. 3,21,00,000/- on account of share capital as well as share premium account. Out of this capital, amount of Rs. 1,97,00.000/- has been infused by the directors of the company or their sister concerns and rest of the capital of Rs. 1,24,00,000/- has been shown from the outside parties, which has subsequently been surrendered by the assessee company. In view of the above, the share capital of Rs. 1,24,00,000/- infused by the assessee company in the name of outside parties during the year under consideration is held to be the unexplained cash credits/unexplained investment within the meaning of section 68 69 of the Act and therefore, an addition of Rs. 1,24,00,000/- is made to the income of assessee company accordingly. Penalty proceedings u/s 271(1)(c) of the Act. are initiated on this issue for furnishing inaccurate particular of income and for concealment of income."*

6. Subsequently the notices U/s 271(1)(c) of the Act were and served upon the assessee which are placed at pages 46 and 47 of the Paper Book.

However, during the penalty proceedings vide order sheet entry dated 14.05.2015 penalty proceedings U/s 271(1)(c) of the Act were dropped.

7. Surprisingly on 31.03.2015 and 09.09.2015, penalty proceedings U/s 271(1)(c) of the Act were again initiated by serving the following notices:

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GOVERNMENT OF INDIA  
OFFICE OF THE  
DY. COMMISSIONER OF INCOME TAX (CENTRAL CIRCLE)  
3<sup>RD</sup> FLOOR, ROOM NO. 303, C.G.O. COMPLEX - I,  
HAPUR CHUNGI, GHAZIABAD

F.No. DCIT/CC/GZB/271(1)(c)/2014-15/ Date : 31.03.2015

To  
M/s. Mahaluxmi Realtech (P) Ltd.  
KJ-2, Kavi Nagar  
Ghaziabad.

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Sir,


**Sub : Initiation of penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 for the A.Y. 2009-10- Regarding.**


Whereas in the course of assessment proceedings before me for the A.Y. 2009-10 it appears to me that you:-

**Have concealed the particulars of your income or you have furnish inaccurate particulars of such income.**

You are hereby requested to appear before me at my office Central Circle, CGO-1, Ghaziabad on 18.04.2015 at 11:30 A.M. and show cause as to why an order imposing a penalty on you should not be made u/s 271(1)(c) of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through your authorized representative, you may show cause in writing on or before the said date which will be considered before any such order is made u/s 271(1)(c) of the Income Tax Act, 1961 .

Yours faithfully,

  
(L.S. Yadav)  
Dy. Commissioner of Income Tax ,  
(Central Circle), Ghaziabad.



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R  
12/09/2015



OFFICE OF THE  
DY. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE,  
ROOM NO. 303, 3<sup>RD</sup> FLOOR, C.G.O. COMPLEX - I,  
KAMALA NEHRU NAGAR, HAPUR CHUNGI, GHAZIABAD

F. No. DCIT/CC/GZB/PSC/2015-16/ 937

Dated : 09/09/2015

To,

M/s Mahaluxmi Realtech (P) Ltd.,  
KJ - 2, Kavi Nagar,  
Ghaziabad.

PAN : AAECM7407Q

Sub : Show cause for launching penalty under section 271(1)(c) of the Income Tax Act, 1961 for the A.Y. 2009-10 - regarding.

Please refer to the above.

2. Notice u/s 271(1)(c) of the Income Tax Act, 1961 was issued to you on 31/03/2015 for which the date of compliance was fixed for hearing on 15/04/2015. On the given date, neither you/AR attended the proceedings nor adjournment was sought. Before passing an order u/s 271(1)(c) of the Income Tax Act, 1961, one more opportunity of being heard is given for which the date is fixed for hearing before the undersigned at Room No. 303, 3<sup>rd</sup> Floor, C.G.O. Complex - I, Hapur Chungi, Ghaziabad on 18/09/2015 at 11:30 A.M.

3. If you do not wish to avail yourself of this office opportunity of being heard in person or authorized representative, you may show cause in-writing on or before the said date which will be considered before any such order is passed u/s 271(1)(c) of the Income Tax Act, 1961.

(R.K. Agarwal)

Dy. Commissioner of Income Tax  
Central Circle, Ghaziabad



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to whole branch



8. We have given thoughtful consideration to the order of penalty. We fail to understand how the penalty has been levied when the same was dropped earlier and pursuant to search no additional income was determined by the AO. The income assessed pursuant to the reopening of the assessment earlier was assessed as income U/s 153C of the Act. Once the penalty proceeding has been dropped earlier for the assessed income Rs. 1.24 crores, there are no legs for imposing penalty on the same assessed income subsequently.

9. Moreover, the penalty notices have been exhibited elsewhere it can be seen from penalty notices, the AO failed to indicate broadly as to limb under which penalty proceedings were triggered. This issue has been well settled by the Hon'ble High Court of Delhi in the case of Sahara India Life Insurance Co. Ltd. 432 ITR 84, wherein the Hon'ble High Court, interalia, 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 [2013] 35 taxmann.com 250/218 Taxman 423/359 ITR 565 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 CIT v. SSA's Emerald Meadows [2016] 73 taxmann.com 241, 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."*

10. This view has been confirmed by the Hon'ble Supreme Court in the case of SSA's Emerald Meadows in petition for Special Leave to Appeal CC No. 11485/2016 arising out of final judgment and order dated 23.11.2015 in ITA No. 380/2015 passed by the High Court of Karnataka at Bangaluru. The relevant finding reads as under:

*"UPON hearing the counsel the Court made the following ORDER*

*Delay condoned.*

*We do not find any merit in this petition. The special leave petition is, accordingly, dismissed. Pending application, if any, stands disposed of."*

and the order of the Hon'ble High Court of Karnataka in ITA No. 380/2015 reads as under:

*"JUDGMENT*

*Heard Sri E.1.Sanmathi, learned counsel for the appellants and perused the record.*

*2. This appeal has been filed raising the following substantial questions of law:*

*(1) Whether, emission if assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?*

*(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.s, 271(1)(c) is bad in law and invalid despite the amendment of Section 271(113) with retrospective effect and by virtue of the amendment, the a:-Isessina officer has initiated the penalty by properly recording the satisfaction for the same?*

*(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued under Section 274 without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?*

*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 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.**"*

11. Considering the facts of the case from all possible angles, we do not find any merit in the levy of impugned penalty; therefore, the AO is directed to delete the impugned penalty from both the assessment orders under consideration.

12. In the result, both the appeals are allowed.

Order pronounced in the Open Court on 23.11.2023

**Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

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

Dated: 23 /11/2023.  
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	21/11/23
Date on which the typed draft is placed before the dictating Member	22/11/23
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

ITA No.- 5826 & 5827/Del/2016  
Mahluxmi Realtech Pvt.Ltd..