IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.2470/Del./2017
Assessment Year 2012-2013

M/s. New Samrat Metals Co. Pvt. Ltd., New Delhi. PAN AABCN7728C C/o. Mrs. Bharati Sharma, B-42, Friends Colony (West), New Delhi–110065.	vs.,	The DCIT, Circle – 18(1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Dr. Rakesh Gupta, Advocate
For Revenue :	Ms. Rakhi Vimal, Sr. DR

Date of Hearing :	21.01.2020
Date of Pronouncement :	24.01.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-38, Delhi, Dated 07.02.2017, for the A.Y. 2012-2013, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. The assessee has raised the following grounds of appeal :

"1. That the CIT (A) is erred under the law while partly confirming the order of A.O., imposing the penalty u/s 271(1)(c) of the Act for filing inaccurate particulars of income.

2. That the CIT(A) is erred under the law while confirming the order of A.O., imposing the penalty u/s 271(1)(c) on following additions & disallowances as the appellant has not furnished inaccurate particulars of its income as alleged :-

a)	*Addition on account of interest u/s. 244A of the Act.*	*Rs. 45,884*
b)	*Excess job work receipts as per 26AS*	*Rs. 18,600*
c)	*Disallowance of short term capital loss*	*Rs.28,71,839*
d)	*Business loss/Depreciation – Revised computation.*	*Rs.23,28,939*

3. That any other grounds of appeal may be added/deleted or amended at the time of hearing."

3. The assessee in this case has filed the return of income declaring NIL income after claiming current year's loss at Rs.54,90,517/-. The A.O. made the above addition against the assessee and noted in the assessment order *"penalty proceedings under section 271(1)(c) of the I.T. Act are initiated separately."* The A.O. in the penalty order noted that he has satisfied that the amount of addition represents the income, the particulars of which, assessee have been incorrectly furnished by the assessee within the meaning of Explanation-1 to Section 271(1)(c) of the I.T. Act. Hence, he levied the penalty under section 271(1)(c) of the I.T. Act, 1961.

4. Learned Counsel for the Assessee submitted that A.O. has issued show cause notice Dated 27.02.2015 in which the A.O. has mentioned :

> *"Have concealed the particulars of your income and furnished inaccurate particulars of such income."*

4.1. He has submitted that since no specific charge have been pointed-out in the notice, therefore, levy of penalty is illegal and unjustified. In support of his contention, he has relied upon Judgment of Hon'ble Delhi High Court in the case of Pr. Commissioner of Income Tax vs., M/s. Sahara India Life Insurance Company Ltd., Dated 02.08.2019, in which in paras 21 and 22, 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 IT AT. 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 fax 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".

5. On the other hand, the Ld. D.R. relied upon the impugned order and submitted that assessee has furnished inaccurate particulars of income and disallowance have been made which have not been challenged by the assessee. No specific ground have been raised by assessee to challenge the levy of penalty with regard to deficiencies noted. Therefore, penalty is levied against the assessee.

6. We have considered the rival submissions. The A.O. before initiating the penalty against the assessee has mentioned in the assessment order that *"penalty*

proceedings under section 271(1)(c) of the I.T. Act are initiated separately." The assessment order is passed on 27.02.2015 on the same day the A.O. issued show cause notice to assessee before levy of the penalty on 27.02.2015 in which A.O. has mentioned *"have concealed the particulars of your income and furnished inaccurate particulars of such income."* The A.O. in the penalty order has, however, levied the penalty for furnishing inaccurate particulars of income incorrectly by assessee within the meaning of Explanation-1 to Section 271(1)(c) of the I.T. Act. Explanatino-1 to Section 271(1)(c) of the I.T. Act deals with concealment of particulars of income. Therefore, A.O. was not definite in his conclusion whether it is a case of concealment of particulars of income or furnishing inaccurate particulars of income. The Hon'ble Karnataka High Court in the case of M/s. SSA Emerald Meadows 73 taxmann.com 241 noted the findings of the Tribunal, in which, the Tribunal has allowed the appeal filed by assessee holding the notice issued by A.O. under section 274 r.w.s. 271(1)(c) of the I.T. Act to be bad in Law as it did not specify under which limb of Section

271(1)(c) of the I.T. Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing inaccurate particulars of income. The Hon'ble Karnataka High Court has referred to their earlier decision in the case of CIT vs., Manjunatha Cotton and Ginning Factory 359 ITR 565 (Kar.) and dismissed the Departmental Appeal. The Judgment of Hon'ble Karnataka High Court have been confirmed by dismissing the SLP filed by the Department by the Hon'ble Supreme Court as reported in 73 taxmann.com 248 (SC). The Hon'ble Delhi High Court in the case of M/s. Sahara India Life Insurance Company Ltd., (supra), decided the same proposition by following the above decisions. In this view of the matter, we are of the view that since notice is bad in Law as it did not specify under which limb of Section 271(1)(c) of the I.T. Act penalty proceedings have been initiated i.e., whether for concealment of particulars of income or furnishing inaccurate particulars of income, therefore, levy of penalty is wholly unjustified. We may also note that since assessee challenged the levy of penalty that includes all the grounds raised by the assessee for challenging the levy of the penalty. In this view of the matter, we set aside the Orders of the authorities below and cancel the penalty. Appeal of the Assessee is allowed.

7. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-	Sd/-
(O.P. KANT)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 24th January, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar, ITAT, Delhi Benches,
Delhi.