IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC-2" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA.No.4233/Del./2019
Assessment Year 1996-1997

Shri Raj Kumar Through Legal Representative Shri Kapil Dev, C/o. Suresh and Associates, 4C, Big Jos Tower, Netaji Subhash Place, Pitampura, New Delhi – 110 034. PAN AAJPK5382L	vs.	The Income Tax Officer, Ward-62(2), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Suresh K. Gupta, C.A.
For Revenue :	Shri R.K. Gupta, Sr. D.R.

Date of Hearing :	16.06.2020
Date of Pronouncement :	16.06.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-20, New Delhi, Dated 15.03.2019, for the A.Y. 1996-1997, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. Briefly the facts of the case are that assessment in this case was completed under section 144 of the I.T. Act, 1961 on 27.03.2002 at an income of Rs.39,80,780/- against the returned income of Rs.4,30,780/-. During the assessment proceedings, an addition of Rs.35,50,000/- was made out of the loans taken from relatives and friends. The assessee has not proved the creditworthiness of the depositors, their creditworthiness and genuineness of the transaction in the matter. The A.O. in the assessment order has merely mentioned *"penalty proceedings under section 271(1)(c) of the I.T. Act have been initiated separately".* The A.O. vide separate Order Dated 09.11.2017 levied the penalty under section 271(1)(c) of the I.T. Act. The Ld. CIT(A) after recording the submissions of the assessee upheld the penalty and dismissed the appeal of assessee.

3. The Learned Counsel for the Assessee contended that A.O. has not recorded any satisfaction under section 271(1)(c) of the I.T. Act in assessment order for initiating the penalty proceedings. In the notice issued before levy of the

penalty Dated 11.09.2017, the A.O. has mentioned the following :

> *"Have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of Explanation 1, 2, 3, 4 and 5."*

3.1. Learned Counsel for the Assessee, therefore, submitted that it is not clear from the assessment order as well as from the notice whether penalty have been initiated / levied for furnishing inaccurate particulars of income or concealment of particulars of income. Therefore, penalty cannot be levied against the assessee. He has relied upon Order of ITAT, Delhi A-Bench, Delhi in the case of Shri Lakshya Seth, Delhi vs., ITO, Ward-19(3), New Delhi in ITA.No.852/Del./2016, Dated 16.05.2018 as well as Judgment of Hon'ble Delhi High Court in the case of Pr. Commissioner of Income Tax vs., Sahara India Live Insurance Corporation Ltd., Dated 02.08.2019 in ITA.No.475/2019 etc., batch, 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 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 vs., 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."

4. The Ld. D.R. on the other hand relied upon the Orders of the authorities below.

5. After considering the rival submissions, we are of the view that penalty is not leviable in the matter. The A.O. issued show cause notice Dated 11.09.2017 before levy of the penalty against the assessee in which the A.O. has recorded the facts noted above. The language used in the notice therefore clearly show that notice issued by the A.O. for levy of the penalty proceedings under section 271(1)(c) of the I.T. Act, 1961, to be bad in Law as it did not specify in 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. The entire penalty proceedings are, therefore, vitiated and no penalty is leviable. We are fortified in our view by the Judgment of the Hon'ble Karnataka High Court in the case of Commissioner of Income Tax vs., SSA's Emerald Meadows (2016) 73 taxmann.com 241 (Kar.) which is confirmed by the Hon'ble Supreme Court reported in 73 taxmann.com 248 (SC). The

issue is also now decided by the Hon'ble Delhi High Court in favour of the case in the case of Pr. Commissioner of Income Tax vs., Sahara India Live Insurance Corporation Ltd., Dated 02.08.2019 (supra). Further the A.O. in the assessment order did not record any satisfaction as to for which limb of Section 271 (1)(c) of the I.T. Act the penalty proceedings have been initiated. The A.O. merely mentioned at the bottom of the assessment order after computing the income that *"penalty proceedings under section 271(1)(c) of the I.T. Act have been initiated separately."* Thus there is a violation of the Law in the matter. We, therefore, do not find any justification to levy the penalty under section 271(1)(c) of the I.T. Act against the assessee. In view of the above discussion, we set aside the Orders of the authorities below and cancel the penalty. Appeal of the Assessee is allowed accordingly.

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

Order pronounced in the open Court.

Sd/-	Sd/-
(ANIL CHATURVEDI)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 16th June, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-2' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.