IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC-2' BENCH, NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 4419/DEL/2019
[Assessment Year: 2009-10]

M/s Giri Buildwell Pvt Ltd LG – 1/R-23, Nehru Enclave New Delhi	Vs.	The I.T.O Ward 10(4) New Delhi
PAN: AABCG 2921 Q		
[Appellant]		[Respondent]

Date of Hearing : 19.03.2020
Date of Pronouncement : 19.03.2020

Assessee by : None

Revenue by : Shri Gaurav Dudiya, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 4, New Delhi dated 22.04.2019 pertaining to assessment year 2009-10.

2. The grievances of the assessee reads as under:

"1. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that even if there was a defect in the notice of the penalty, the penalty order is not vitiated i.e. the penalty notice is valid.

2. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in confirming the levy of penalty even though partly by disregarding the judgment of the Hon'ble Supreme Court in the case of SSA's Emerald Meadows reported in 386 ITR 13 confirming the judgment of Hon'ble Karnataka High Court in the case of Manju Natha Cotton and Ginning Factory reported in 359 ITR 565."

3. None appeared on behalf of the assessee.

4. I have carefully perused the grounds of appeal mentioned hereinabove and pointed out to the ld. DR that the appeal can be decided ex parte since the quarrel is well settled in favour of the assessee and against the Revenue by the decision of the Hon'ble High Court of Delhi in the case of Sahara India Life Insurance Company Ltd ITA No. 475 of 2019 order dated 02.08.2019.

5. The ld. DR fairly conceded to this. Therefore, I proceed to decide this appeal exparte.

6. The notice u/s 274 of the Act which was issued and served upon the assessee, which is on record, reads as under:

> "Whereas in the course of proceedings before me for the assessment year 2009-10, it appears to me that you :-
>
> nave without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian income-tax Act, 1922 or which you were required to furnish under section-139(1) or by a notice given under section 139(2)/148 of the Income-tax Act, 1961,., No. dated or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.
>
> 'have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/13(2) of the
>
> Income-tax Act, 1961 No................dated ....
>
> 'have concealed the particulars of your Income or furnished inaccurate particulars of such Income.

You are hereby requested to appear before me at Room No. 337 on 27/01/12 and show cause why an order imposing a penalty on you should not be made under Section 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard ib person or through authorized representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 271

Income tax officer
Ward 12(1)
New Delhi

6. This penalty notice was challenged before the ld. CIT(A) and the ld. CIT(A), though admitted the defect in the penalty notice, decided against the assessee as under:

"6.1 By grounds of appeal No. 1 to 4, the appellant has challenged the validity of penalty proceedings on the ground that no specific charge i.e. whether the penalty was being proposed to be imposed for furnishing of inaccurate particulars or concealment of income was mentioned in the formal notice u/s 274 and no valid satisfaction as well as plausible reason have been brought on record by the AO.

.2 I have considered the technical issues raised in these ground. I am of the view that even assuming that there was vagueness in the penalty notice, the same has caused no prejudice to the appellant as the appellant clearly understood the purport and import of notice issued u/s 274 r.w.s. 271 of the Act. From the penalty order, it is clear that penalty has been imposed on account of furnishing of inaccurate particulars. Entire facts and background of the case should be kept in mind and mere mistake in the language should not vitiate the proceeding.

6.3 Reliance in this regard is placed on the decisions of the Hon'ble Madras High Court in the case of M/s Sundaram Finance Ltd. vs. ACIT, Chennai, TC (Appeal) No. 876 & 877 of 2008 dated 23/04/2018 and Trimurti Engineering Works vs. ITO [2012] 25 taxmann.com 363 (Delhi)."

7. A perusal of the aforementioned notice clearly shows that the Assessing Officer did not specify under which limb of the provision he has initiated the proceedings. Moreover, the penal proceedings are separate from assessment proceedings and while initiating penalty proceedings u/s 271(1)(c) of the Act, it is incumbent upon the Assessing Officer to demonstrate under which limb he is proposing levy of penalty

8. This issue came up before the Hon'ble High Court of Delhi and other Hon'ble High Courts. On identical circumstances, the Hon'ble High Court of Delhi In the case of Sahara India Life Insurance Company Ltd ITA No. 475 of 2019 order dated 02.08.2019 has 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 inc me 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 of2016 by order dated 5th August, 2016."*

11. If the notice is read with the decision of the Hon'ble High Court of Delhi [supra], in our considered opinion, the penalty will not survive. It would not be out of place to refer to the decision of the Hon'ble High Court of Delhi in the case of Virgo Marketing Pvt Ltd

[2008] 171 Taxmann 156 [Delhi] wherein the Hon'ble High Court held as under:

> "We are unable to discern from a reading of the assessment order why the Assessing Officer chose to initiate penalty proceedings against the assessed and under which part of Section 271(1)(c) of the Act. In other words, we are unable to discern from the assessment order the reason for initiating penalty proceedings. Therefore, the concurrent view held by both the authorities below must be accepted."

12. Further, the Hon'ble Supreme Court in the case of SSA's Emerald Meadows Pvt Ltd [2016] 8 TMI 1145 , relied upon by the ld. counsel for the assessee, the Hon'ble Apex Court held that the High Court order confirmed in [2015] (11) TMI 1620 – Karnataka High Court. Notice issued by the Assessing Officer u/s 274 r.w.s 271(1)(c) of 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 issue was decided in favour of the assessee.

13. Considering the facts of the case in totality, in the light of judicial decisions referred to hereinabove, I set aside the findings of the ld. CIT(A) and direct the Assessing Officer to delete the penalty of Rs. 57,933/-.

14. In the result, the appeal filed by the assessee in ITA No. 4419/DEL/2019 is allowed.

The order is pronounced in the open court on 19.03.2020.

Sd/-/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 19th March, 2020.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	