

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I(2) + SMC' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 1393/DEL/2019 (A.Y 2010-11)

Adman Advertising F-137, Ashok Vihar, Phase-1 New Delhi PIN 110052 AAAFA7942D (APPELLANT)	Vs	ACIT Circle-34(1) Room No. 804, 8 th Floor, Pratyakash Kar Bhawan Civic Centre New Delhi PIN 110002 (RESPONDENT)
--	----	--

Appellant by	Sh. Sanjay Jain, FCA
Respondent by	Sh. Pradeep Singh Gautam, Sr. DR

Date of Hearing	03.03.2020
Date of Pronouncement	19.03.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 22/6/2018 passed by CIT(A)-12 for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

1. *"The Id. AO as well as Ld. CIT (A) have erred in confirming the Penalty U/s 271(l)(c) being 100% of the tax sought to be evaded on Rs. 5,95,940.00.*
2. *That there cannot be any penalty U/s 271(l)(c) merely because of discrepancy with the AIR Information and thus penalty order is bad.*
3. *The Ld. AO failed to provide the details on the basis of which the AIR Information was filed by the respective parties and thus it cannot be said that*

assessee has either filed inaccurate particulars of income are canceled his income.

4. That the notice u/s 274 Read with Sec. 271 is bad and defective as it is issued without deleting the appropriate clause under which the penalty is proposed to be imposed is either for filling of inaccurate particular of income or concealment of particular of income and as such the notice is not sustainable and not curable.

5. The penalty imposed U/s 27 l(l)(c) is bad in law and facts of the case.

6. The above Grounds of Appeal are without prejudice to one another.

3. The assessment was completed u/s 143(3) at an income of Rs. 26,07,280/-. Penalty proceedings u/s 271(1)(c) were initiated and the satisfaction note was recorded. The penalty was imposed at Rs. 2,07,478/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the notice u/s 274 read with Section 271 dated 20/03/2013 has not strike off the particular limb of Section 271 of the Act upon which the penalty was imposed. Thus, the Ld. AR submitted that the notice issued u/s 274 read with Section 271(1)(c) is invalid as it did not specify the charge against which the penalty is levied. Even in the assessment order, there is no separate charge mentioned. Thus, not only the notice issued to the assessee u/s 274 read with Section 271(1)(c) is defective, but Assessing Officer has not even made himself satisfied at the time of making disallowance/additions in assessment order whether the assessee furnished inaccurate particular of income or concealed particulars of income. Therefore, the Ld. AR submitted that entire penalty proceeding stand vitiated, if the notice itself is not in accordance with law. The Ld. AR relied upon the decision of the Hon'ble Karnataka High Court in case of CIT(A) Vs. M/s Manjunathan and Ginni Factory and ors 359 ITR 565. The above principal was further affirmed by the Apex Court in case of CIT(A) Vs. M/s SSA' Emerald Meadows.

6. The Ld. DR relied upon the decision of the Hon'ble High Court in the case of New Holland Tractors India Pvt. Ltd. Vs. CIT 49 Taxman.com 573.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that there is no concealment in the present case. The Assessee has also filed all the details during the regular assessment proceedings. From the notice dated 28.12.2011 produced by the Ld. AR during the hearing, it can be seen that the Assessing Officer was not sure under which provisions of Section 271 of the Income Tax Act, 1961, the assessee is liable for penalty. The issue is squarely covered by the decision of the Hon'ble Supreme Court in case of M/s SSA' Emerald Meadows. The extract of the Hon'ble Karnataka High Court in M/s. SSA' Emerald Meadows are as under which was confirmed by the Hon'ble Apex Court:

“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.”

Since in the instant case also the inappropriate words in the penalty notice has not been struck off and the notice does not specify as to under which limb of

the provisions, the penalty u/s 271(1)(c) has been initiated, therefore, we are of the considered opinion that the penalty levied u/s 271(1)(c) is not sustainable and has to be deleted. Although the Ld. DR submitted that mere non-striking off of the inappropriate words will not invalidate the penalty proceedings, however, the decision of the Hon'ble Karnataka High Court in the case of SSA'S Emerald Meadows (supra) where the SLP filed by the Revenue has been dismissed is directly on the issue contested herein by the Assessee. Further, when the notice is not mentioning the concealment or the furnishing of inaccurate particulars, the ratio laid down by the Hon'ble High Court in case of M/s. Sahara India Life Insurance Company Ltd. (supra) will be applicable in the present case. 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 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.”

Further, the case law referred by the Ld. DR that of New Holland Tractor India (supra) will not be applicable in the present case as in that case the particular charge of Section 271 (1)(c) that of concealment of income was

mentioned, but in present case that is not the case. Thus, notice under Section 271(1)(c) r.w.s. 274 of the Act itself is bad in law. We, therefore, set-aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied.

8. In result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 19th March , 2020.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 19/03/2020
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	04.03.2020
Date on which the typed draft is placed before the dictating Member	05.03.2020
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	19 .03.2020
Date on which the final order is uploaded on the website of ITAT	19 .03.2020
Date on which the file goes to the Bench Clerk	19 .03.2020
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	