

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC-1" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA Nos.9547 & 9545/Del/2019
Assessment Years : 2008-09 & 2009-10

Harvansh Chawla, C-17, GF, East Nizamuddin, New Delhi-110013. PAN-ADDPC7559G	Vs	ACIT, Central Circle-5, New Delhi.
APPELLANT		RESPONDENT
Appellant by	Sh. Rohit Tiwari, Adv.	
Respondent by	Sh. Farhat Khan, Sr.DR	
Date of Hearing	31.03.2021	
Date of Pronouncement	10.05.2021	

ORDER

PER KUL BHARAT, JM :

These appeals by the assessee for the assessment years 2008-09 & 2009-10 are directed against the order of learned CIT(A)-24, New Delhi both dated 29.11.2019.

2. Both appeals were taken up together being disposed of by way of a consolidated order. First we take up **ITA No.9545/Del/2019 [Assessment Year 2009-10]** wherein the assessee has raised following grounds of appeal:-

- 1) *"On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of AO of levy of penalty u/s 271(1)(C) of the Income Tax Act, 1961 ("the Act") amounting Rs. 12,80,780/- initiated on the basis of the Notice u/s 274 read with section 271(1)(c) of the Act dated 28-12-2011 issued alongwith the*

assessment order without specifying clear-cut charge of Concealment of Income or furnishing inaccurate particulars of income.

2) On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the order of the AO passed under section 271(1)(c) of the Act which is not conformity with the provisions of section 271(1)(c) of the Act.

3) On the facts and circumstances of the case and in law, the CIT(A) fail to appreciate that Ld. Assessing Officer invoke explanation 1 to section 271(1)(c) of the Act which is applicable only in case of concealment of income and not for furnishing of inaccurate particular of income.

4) On the facts and circumstances of the case and in law, the CIT(A)/AO erred in holding that the appellant has furnished inaccurate particular in respect of disallowance of the Interest expenditure claimed u/s 36(i)(iii) of the Act placed on records.

5) On the facts and circumstances of the case and in law, the CIT(A)/AO erred in holding that the appellant has furnished inaccurate particular in respect of addition on account of disallowance u/s 40(a)(ia) of the Act placed on records.

6) On the facts and circumstances of the case and in law, the CIT(A)/AO erred in not appreciating the fact that appellant relied on the opinion of the expert, thus the matter is squarely covered by the judgment of Hon'ble Supreme Court in case of Price Waterhouse Coopers (P.) Ltd. Vs Commissioner of Income Tax, Kolkata [2012] 348 ITR 306 (SC).”

3. The facts giving rise to the present appeal are that case of the assessee was taken up for scrutiny assessment. The assessment u/s 143(2) of the Income Tax Act, 1961 (“the Act”) vide order dated

28.12.2011. While framing the assessment, the Assessing Officer made various disallowances and added the same into the income of the assessee. The Assessing Officer had made addition on account of disallowance of interest, addition of unexplained credits, addition on account of disallowance u/s 14A of the Act, addition on account of disallowance u/s 40(a)(ia) of the Act and addition on account of prior period expenses. On appeal, Ld.CIT(A) confirmed the addition on Rs.37,34,407/- and addition made on account of disallowance u/s 40(1)(ia) of the Act was sustained on this. The Assessing Officer proceeded to impose the penalty u/s 271(1)(c) of the Act. After giving notice to the assessee, penalty of Rs. 12,80,780/- u/s 271(1)(c) of the Act was imposed vide order dated 30.03.2019.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who also sustained the penalty.

5. Now, the assessee is in appeal before this Tribunal.

6. Ground Nos.1, 2 and 3 raised by the assessee are against the legality of penalty. Ld. Counsel for the assessee submitted that the penalty deserves to be dismissed on account of defective notice. Ld. Counsel for the assessee drew my attention to the notice issued by the Assessing Officer. Ld. Counsel for the assessee submitted that from the notice also, it is clear that there is no specific charge by the Assessing Officer. He submitted that in the light of judgement of the Hon'ble Delhi High Court in the case of *Pr.CIT vs Sahara India Life Insurance Company Ltd. in ITA No.475/2019 judgement dated 02.08.2019*, the impugned

order deserves to be quashed as the initiation of proceedings is not in accordance with law.

7. On the contrary, Ld. Sr. DR opposed the submissions and relied on the orders of the authorities below. Ld. Sr. DR submitted that assessee himself had participated in the penalty proceedings and as such was aware of the charge. He further submitted at this stage, the assessee should not be permitted to raise such objection.

8. I have heard rival contentions and perused the material available on record. The Revenue could not dispute the fact that notice u/s 271(1)(c) of the Act does not specify specific charge whether it is against the filing of accurate particulars of income or concealing particulars of income. The Hon'ble Delhi High Court in *Pr.CIT vs Sahara India Life Insurance Company Ltd. (supra)* 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.*

23. *The appeals are accordingly dismissed.”*

9. Respectfully following the judgement of Hon'ble Delhi High Court in *Pr.CIT vs Sahara India Life Insurance Company Ltd.* (supra), I hereby quash the penalty order as the initiation of penalty is not in accordance with law. Ground Nos.1, 2 & 3 of the assessee's appeal are allowed. Ground Nos. 4 & 5 of the assessee are on merit of levy of penalty as I have quashed the penalty and being not in accordance with law. Hence, rest of this Grounds are not being adjudicated, the same have become academic only.

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

11. Now, coming to **ITA No.9547/Del/2019** filed by the assessee relating to Assessment Year 2008-09. The assessee has raised following grounds of appeal:-

1. *“On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of AO of levy of penalty u/s 271(1)(c) of the Income Tax Act, 1961 ("the Act") amounting Rs 18,64,850/- initiated on the basis of the Notice u/s 274 read with section 271 of the Act dated 30-12-2010 issued alongwith the assessment order without specifying clear-cut charge of Concealment of Income or furnishing inaccurate particulars of income.*

2. *On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the order of the AO passed under section*

271(1)(c) of the Act which is not conformity with the provisions of section 271(1)(c) of the Act.

3. *On the facts and circumstances of the case and in law, the CIT(A) fail to appreciate that Ld. AO invoke explanation 1 to section 271(1)(c) of the Act which is applicable only in case of concealment of income and not for furnishing of inaccurate particular of income.*

4. *On the facts and circumstances of the case and in law, the CIT(A)/AO erred in holding that the appellant has furnished inaccurate particular in respect of disallowance of the Interest expenditure claimed u/s 36(i)(iii) of the Act placed on records.*

5. *On the facts and circumstances of the case and in law, the CIT(A)/AO erred in not appreciating the fact that appellant relied on the opinion of the expert, thus the matter is squarely covered by the judgment of Hon'ble Supreme Court in case of Price Waterhouse Coopers (P.) Ltd. Vs Commissioner of Income Tax, Kolkata [2012] 348 ITR 306 (SC).”*

12. The grounds raised in Assessment Year 2008-09 are identical to the issue raised in Assessment Year 2009-10.

13. Both representatives adopted the same arguments as in ITA No.9545/Del/2019.

14. I have heard the Ld. Representatives of both parties. The facts in the year under consideration are similar to the facts for the Assessment Year 2009-10. The grounds are also identical. I have quashed penalty for the Assessment Year 2009-10 by observing as under:-

9. *“Respectfully following the judgement of Hon’ble Delhi High Court in Pr.CIT vs Sahara India Life Insurance Company Ltd. (supra), I hereby quash the penalty order as the initiation of penalty*

is not in accordance with law. Ground Nos. 1, 2 & 3 of the assessee's appeal are allowed. Ground Nos. 4 & 5 of the assessee are on merit of levy of penalty as I have quashed the penalty and being not in accordance with law. Hence, rest of this Grounds are not being adjudicated, the same have become academic only."

15. Thus, taking the consistent view, the grounds raised in this appeal are also allowed as the issues are identical in Assessment Year 2009-10.

16. In the result, both appeals of the assessee are allowed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 10th May, 2021.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI