

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
DR. B. R. R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 3239/DEL/2018 (A.Y 2014-15)
(THROUGH VIDEO CONFERENCING)**

Samal Infra Projects P. Ltd. F-47, Sector-Deleta-1, Greater Noida, Greater Noida, Uttar Pradesh AANCS2375J (APPELLANT)	Vs	ITO Ward-3(3) Noida Uttar Pradesh (RESPONDENT)
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Appellant by	Ms. Shipra Walia, CA
Respondent by	Sh. Umesh Takyar, Sr. DR

Date of Hearing	14.10.2021
Date of Pronouncement	1.11.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeals is filed by the assessee against the order dated 21/03/2018 passed by the CIT(A)-1, Noida for Assessment Year 2014-15.

2. The grounds of appeal are as under:-

1. *"That the learned Commissioner of Income-tax (Appeals) -1 Noida (hereinafter referred to as CIT (A) has erred both on facts and in law in upholding the order of levying of penalty u/s 271(1)(c) of the Income-tax Act, 1961, ("the Act") for furnishing of inaccurate particulars of income (the AO considered it as concealment of income and CIT changed it to inaccurate particulars).*
2. *On the facts and in the circumstances of the case, the CIT (A) has failed to appreciate that penalty u/s 271(1)(c) of the Act cannot be levied merely*

because of disallowance of certain expenses claimed by the appellant is not further contested.

3. Any other grounds of appeal may be added/amended/deleted at the time of hearing of appeal.

Each of the above ground is independent and without prejudice to the other ground. “

3. The assessee company is engaged in the business of construction. For assessment year 2014-15, the Assessee filed its return of income showing taxable income of Rs. 11,95,010/- on November 19 2014. The Assessing Officer observed that the assessee has not paid statutory dues of service tax Rs 41,73,159/- till the due date of filing the return thereby attracting disallowance under Section 43B of the Act. However non-payment of statutory dues was pointed out at Sr. no. 26 of Form 3CD of Tax audit report as pointed out by the Assessee. Further an ad-hoc disallowance of Rs 10,000/- was also made to cover up the possible leakage in the books of accounts. Pursuant to proceedings under sub section 3 of section 143 of the Act for AY 2014-15, the Assessing Officer passed an assessment order dated 22nd December 2016 wherein a sum of Rs.42,73,159/- was added to fee computation of income. The Assessing Officer initiated penalty proceedings under the Act on the grounds of concealment of income or furnishing of inaccurate particulars of income. The penalty order was passed by the Assessing Officer on 06 June 06 2017 thereby imposing penalty of Rs 13,20,406 on the ground of concealment of income .

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) modified the penalty to the extent that the assessee is guilty of furnishing inaccurate particulars of its income and confirmed the penalty .

5. The Ld. AR submitted that the notice dated 22/12/2016 has not given a specific charge for penalty. The Ld. AR submitted that the CIT(A) erred in

confirming the penalty u/s 271(1)(c) of the Act as under which limb of Section 271(1)(c), the penalty is levied was not mentioned in the notice issued under Section 271(1)(c) read with Section 274 of the Act. The Ld. AR submitted that whether the penalty is for concealment of income or furnishing of inaccurate particulars of income was not evident from the notice nor from the penalty order as well. The Ld. AR further submitted that the penalty provision being quasi judicial, unless there is specific charge there cannot be levy of penalty. Therefore, the order levying penalty is wrong and bad in law. The Ld. AR relied upon the decision of the Hon'ble Supreme Court in case of CIT vs. SSA's Emerald Meadows (2016) 73 Taxman.com 248 (SC) and CIT v. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Kar). The Ld AR further submitted that the Hon'ble Delhi High Court in case of Pr. CIT Vs. M/s. Sahara India Life Insurance Company Ltd. (ITA No.475/2019 vide order dated 02.08.2019) held that notice issued by the Assessing Officer would be bad in law if it did not specify which limb of Section 271(1)(c) of the penalty proceedings had been initiated.

6. The Ld. DR submitted that the penalty order is very clear that the penalty is imposed on furnishing of inaccurate particulars of income and, therefore, merely not mentioning the specific limb of Section 271(1)(c) will not make the penalty order bad in law. The Ld. DR relied upon the Assessment Order, Penalty order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant materials available on record. First of all, in the notice issued u/s 274 r.w.s 271(1)(c) of the Income Tax Act, 1961, there was no specific charges as relates to concealment of income or furnishing of inaccurate particulars of income. From the notice dated 22/12/2016 produced by the Ld. AR during the hearing, it can be seen that the Assessing Officer was not sure under which limb of provisions of Section 271 of the Income Tax Act, 1961, the assessee is liable for penalty. Besides that the Assessment Order also did not specify the charge as

to whether there is concealment of income or furnishing of inaccurate particulars of income in assessee's case. Thus, there is no particular limb mentioned in the notice issued under Section 271(1)(c) r.w.s. 274 of the Act. This issue is squarely covered by the decision of the Hon'ble Supreme Court in case of M/s SSA' Emerald Meadow. The extract of the decision 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 ITA No. 4913/Del/2015 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."

Thus, Additional Ground No. (ii) of the assessee's appeal is allowed. Since the inception of the notice issued u/s 271(1)(c) has become null and void, there is no need to comment on merit of the case. The Penalty u/s 271(1)(c) of the Act is quashed."

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.”

Thus, notice under Section 271(1)(c) r.w.s. 274 of the Act itself is bad in law. Besides, this it can be seen from the order of the CIT(A) in last para no. 8 that the CIT(A) has modified the limb of the penalty u/s 271(1)(c) of the Act which shows that the Assessing Officer was not specific in the imposition of the penalty under Section 271(1)(c) of the Act. Thus, by following the legal ratio set out in the decision of the Hon'ble Supreme Court in case of SSA'S Emerald Meadows (supra), we, therefore, set-aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied.

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

Order pronounced in the Open Court on this 01st Day of November, 2021

**Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER**

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

Dated: 1/11/2021
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI