

**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. 4077/DEL/2018 (A.Y 2010-11)
(THROUGH VIDEO CONFERENCING)**

Singhal Sunrise Steels Pvt. Ltd. 241, Loha Mandi, BSR Industrial Area, Ghaziabad, Uttar Pradesh AAJCS7938 (APPELLANT)	Vs	ITO Ward-2(3), Ghaziabad, Uttar Pradesh (RESPONDENT)
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Appellant by	Sh. Satyajeet Goel, CA
Respondent by	Sh. Umesh Takyar, Sr. DR

Date of Hearing	14.10.2021
Date of Pronouncement	02.11.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeals is filed by the assessee against the order dated 28/03/2018 passed by the CIT(A)-Ghaziabad, for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

1. *“That the Ld.CIT(A) –Ghaziabad has erred in confirming the penalty of Rs. 24,35,003/- u/s 271(1)(c) of the Income Tax Act, 1961.*
2. *That the order of the Ld.CIT(A) is bad in law and on the facts of the case.”*

Additional grounds:

“1(i) That on the facts and circumstances of the case, the Ld. CIT(A) has erred in upholding penalty order passed u/s 271(1)(c) even though the assessing officer has failed to specify the charge and record requisite satisfaction with regard to concealment of income or furnishing of inaccurate

particulars of income in terms of provisions of section 271(1)(c) of the Act and as the impugned penalty order is illegal and void-ab-initio.

(ii) That the notice u/s 274 r.w.s. 271(1)(c) being on specific and assessing officer having failed to strike out the irrelevant charge, the impugned order is invalid and in contravention to principle of natural justice.

(iii) The impugned order passed u/s 271(1)(c) is in disregard to principle laid down superior court and same is bad in law.”

3. Assessee has filed its Income Tax Return on dated 30/09/2010 through E-filing showing total income of Rs. 2,29,830/-. The assessment was completed on income of Rs. 81,29,830/- was made at Rs. 79,00,000/- u/s 68 of the I.T. Act, 1961. Penalty proceedings u/s 271(1) (c) were also initiated and show Cause notice u/s 271(1)(c) were issued on 30.03.2013. The CIT(A) vide his order dated 16/2/2015 dismissed the appeal of the assessee on quantum. Further show cause notice u/s 271(1)(c) were issued on 14/7/2015 and 25.02.2015.

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 notices dated 14/07/2013, 14/7/2015 and 25.02.2015 have 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 concealment 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 30/03/2013 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. 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 2nd Day of November, 2021

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

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

Dated : 02/11/2021
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	14/10/2021
Date on which the typed draft is placed before the dictating Member	14/10/2021
Date on which the typed draft is placed before the Other Member	02/11/2021
Date on which the approved draft comes to the Sr. PS/PS	02/11/2021
Date on which the fair order is placed before the Dictating Member for pronouncement	02/11/2021
Date on which the fair order comes back to the Sr. PS/PS	02/11/2021
Date on which the final order is uploaded on the website of ITAT	02/11/2021
Date on which the file goes to the Bench Clerk	02/11/2021
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	