

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

**BEFORE SHRI G. S. PANNU, PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 4379/DEL/2017 (A.Y 2006-07)

(THROUGH VIDEO CONFERENCING)

ACIT Room No. 102, ARA Centre, E-2, Jhandewalan Extension, New Delhi (APPELLANT)	Vs	Inayatali Esmail Soomar, E-405, Greater Kailash-II, New Delhi AAAPS6290E (RESPONDENT)
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Appellant by	Dr. Rakesh Gupta, Adv
Respondent by	Ms. Anima Barnwal, Sr. DR

Date of Hearing	22.09.2021
Date of Pronouncement	03.11.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against order dated 29/03/2017 passed by CIT(A)-25, Delhi for assessment year 2006-07.

2. The grounds of appeal are as under:-

1. *“On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty u/s 271(l)(c) of the Act of Rs. 1,68,30,000/-.*
2. *On the facts and in the circumstances of the case, the Ld.CIT(A) has erred holding that no penalty u/s 271(l)(c) of the Act can be levied and that the A.O. failed to take into account the provisions of section 271 AAA of the Act. In fact, provisions of section 271 AAA of the Act are not applicable in the case of assessee as the undisclosed income does not pertain to specified previous year_which is only A.Y.2012-13 as the search was held on 10.02.2012.*
3. *On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in holding that the provisions of section 271(1)(c) are not applicable in the case*

of the assessee. In fact, the A.O. has correctly initiated and levied the penalty u/s 271(1)(c) of the Act for the concealment of income by the assessee.

3. The assessee is an Individual and Search & Seizure operation u/s 132 of the Income Tax Act, 1961 were conducted on 10.02.2012 in his case, consequent to the Search conducted in the Aerens Group on 17.08.2011. The assessee filed Return declaring Income of Rs.8,03,92,450/- on 18.11.2013. While computing the Income for the assessment year under consideration, the assessee himself had added the sum of Rs.5,00,00,000/-. In assessee's case evidence was found in the form of Excel Sheet 'Down payment booking details.xls' seized as Annexure A-27 during the Search of Aerens Group at the corporate office of AEZ Group at 300-303 Bakshi House, Nehru Place, New Delhi, which was found in hard disk. In the Excel Sheet, name of the assessee appears along with the details of payment of Rs. 1,54,00,000/- by Cheque and Rs.5,00,00,000/- in Cash for a property of 10,000 sq.ft. @ Rs.6,887 per sq.ft. and balance remaining at Rs.34,70,000/- in Indirapuram Habitat Centre along with other Investors. The assessee accepted that he had invested Rs.6.64 Crores in Cash in the above mentioned property and that the same was not shown in his Income Tax Return. Accordingly, Shri Inayat Ali Ismail Soomar admitted Rs.5 Crores as Undisclosed Income invested in the said property along with Rs. 1.64 Crores invested by his son on his behalf, from his own Undisclosed Income. The Income of the assessee was assessed at Rs. 8,03,92,450/- vide Order dated 20.03.14 u/s 153A r.w.s. 143(3) of the Income Tax Act. However, since the Undisclosed Cash investment was detected on basis of Search conducted at the residence/office premises of the Aerens Group, penalty proceedings under 271(1)(c) of the Income Tax Act, were initiated by the Assessing Officer. Subsequently, Penalty u/s 271(1)(c) @ 100% of the Tax sought to be evaded, amounting to Rs. 1,68,30,000/- was imposed by the Assessing Officer vide Penalty Order dated 26.09.14.

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

5. The Ld. DR submitted that the CIT (A) erred in holding that no penalty u/s 271(1)(c) of the Act can be levied and that the Assessing Officer failed to take into account the provisions of Section 271AAA of the Act. In-fact, provisions of Section 271AAA of the Act are not applicable in the case of the assessee as the own business income does not pertain to specified previous year which is only for Assessment Year 2012-13. Search was held on 10/2/2012. The Ld. DR further submitted that the Assessing Officer has correctly initiated and levied the penalty u/s 271(1)(c) of the Act for the concealment of income by the assessee.

6. The Ld. AR submitted that the notice u/s 271(1)(c) has not strike off the particular limb there is no satisfaction recorded by the Assessing Officer in the original assessment order. The Ld. AR relied upon the decision of the Hon'ble Apex Court in SSA Meadow as well as Sahara Insurance. The Ld. AR further submitted that the CIT(A) has taken a proper cognizance that since the matter was of search the initiation of 271(1)(c) is not applicable in case of search after first day of June, 2007 but fore first day of July, 2012, the provisions of Section 271AAA shall apply and the imposition of penalty shall be govern under this Section. Thus, the Ld. AR relied upon the decision of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. The CIT(A) has rightly held that in case of search, provisions of Section 271AAA will be attracted. Besides this, the notice u/s 271(1)(c) is also defective as the notice has not stated out the actual limb of Section 271(1)(c) of the Act which has to be invoked. The initiation of the penalty is also not stated in the assessment order. 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. The CIT(A) rightly deleted the penalty. There is no need to interfere with the findings of the CIT(A). Therefore, the appeal of the Revenue is dismissed.

8. In result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on this 3rd Day of November, 2021

**Sd/-
(G. S. PANNU)
PRESIDENT**

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

Dated: 03/11/2021

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	24.09.2021
Date on which the typed draft is placed before the dictating Member	24.09.2021
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	03.11.2021
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	