

IN THE INCOME TAX APPELATE TRIBUNAL

DELHI BENCH "G": NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 790/Del/2016

A.Y. : 2011-12

MANU BALI,
C/O MATTA & ASSOCIATES,
877, AGGARWAL CYBER PLAZA-II,
NETAJI SUBHASH PLACE,
PITAMPURA, DELHI - 11 0034
(PAN: AAAPB4096P)

VS. ACIT, CIRCLE 32(1),
CIVIC CENTRE,
NEW DELHI

(Appellant)

(Respondent)

Assessee by : Sh. Ajay Kumar Matta, Adv.
Department by : Sh. S.S. Rana, CIT(DR)

ORDER

PER H.S. SIDHU, JM

This appeal by the Assessee is directed against the Order of the Ld. Commissioner of Income Tax (Appeals-18), New Delhi dated 02.11.2015 pertaining to assessment year 2011-12.

2. The grounds of appeal raised in the assessee's appeal read as under:-

1. *That the Ld. CIT(A) has grossly erred by confirming the penalty imposed by the Assessing Authority of Rs. 98,996/- under section 271(1)(c) of the I.T. Act, 1961.*

2. *That the Ld. CIT(A), New Delhi has further erred by not appraising himself about the whole facts of the case before confirming the penalty imposed by AO of Rs. 98,996/-.*
3. *That the Ld. CIT(A) has further erred by approving the action of the AO.*

That the above grounds are without prejudice to each other.

The appellant craves leave to add, alter, amend or forego any of the grounds of appeal before or at the time of hearing.

3. The brief facts of the case are that a Return showing income of Rs. 1,23,83,470/- was filed on 21.7.2011. The assessee derives income from house property and other sources. In this case assessment was completed vide order dated 03.2.2014 at total income of Rs. 1,27,03,849/- by making disallowance of expenditure claimed u/s. 57 of the I.T. Act, 1961 amounting to Rs. 3,20,377/-. The AO had initiated penalty proceedings u/s. 271(1)© of the Act on the disallowance of Rs. 3,20,377/- in the assessment order. The assessee has filed appeal against the assessment order for the year under consideration. In other words, the assessee has accepted the addition made during the course of assessment proceedings. The facts on the issue of addition of Rs. 3,20,377/- are that on perusal of the

computation, the AO observed that an amount of Rs. 30,58,142/- had been claimed as deduction u/s. 57 of the I.T. Act, 1961. The assessee was asked to explain vide order sheet entry dated 25.11.2013 how deduction claimed u/s. 57 of the Act has been incurred to earn income from other sources. In response the assessee filed the reply vide submission dated 9.12.2013. Further to verify the claim of the assessee, the assessee was asked vide order sheet entry dated 9.12.2013 to produce narration of all the entries of overdraft account out of which loans have been taken and interest is being paid. In response to the same, the assessee gave the reply dated 18.12.2013. The reply of the assessee was considered by the AO but found partially acceptable. Thereafter, the AO observed that deduction of processing charges paid by the assessee was not allowable since the purpose of opening this OD account had not been made clear by the assessee. The number of withdrawals for personal / other purposes was more than the withdrawals for earning income from other sources. The other facts related to rental income of the assessee were considered. The amount of interest was disallowed as deduction u/s. 57 of the Act comes to Rs. 3,20,377/-. Therefore, an amount of Rs. 3,20,377/- was disallowed and added back to the income of the assessee under the 'income from other sources.' Accordingly, notice u/s. 271(1)(c) read with section 274 of the I.T. Act, 1961 was issued on 3.2.2014 and in response to the same assessee furnished its reply dated 10.2.2014 and after considering the same, the AO

levied the penalty u/s. 271(1)(c) by observing that the assessee has furnished inaccurate particulars within the meaning of explanation 1 to the sub-section (1) of section 271(1)© of the I.T. Act, 1961 where penalty should invariably be imposed. AO further observed that the act of assessee was a deliberate act to evade the tax on amount of Rs. 3,20,377/- and an act committed for concealment of the particulars of his income and furnishing inaccurate particulars of his income. Hence, he levied the minimum and maximum penalty of Rs. 98,996/- u/s 271(1)© of the I.T. Act, 1961 vide order dated 27.8.2014.

4. Against the Penalty order the Assessee appealed before the Id. CIT(A), who vide impugned order dated 02.11.2015 has dismissed the appeal of the assessee.

5. At the time of hearing, Ld. Counsel of the Assessee has draw our attention towards the assessment order dated 03.2.2014 passed u/s. 143(3) of the Act and stated that while completing the assessment the AO has initiated the penalty proceedings u/s. 271(1)© of the Act for concealment of income and for furnishing of inaccurate particulars within the meaning of explanation 1 to the sub-section (1) of section 271(1)(c) of the I.T. Act. Similarly, he also draw our attention towards the penalty order dated 27.8.2014 wherein the AO has observed that the act of the assessee was a deliberate act to evade the tax on amount of Rs. 3,20,377/- and an act committed for concealment of the particulars of his income and furnishing

inaccurate particulars of his income and imposed the penalty of Rs. 98,996/- u/s. 271(1)© of the Act on the amount added for which inaccurate particulars has been furnished. In view of the above, he stated that entire penalty proceedings stand vitiated, because it is not in accordance with law and in order to support his contention, he placed the reliance on the following decisions:-

- Hon'ble Karnataka High Court decision in the case of CIT & Ors. Vs. M/s Manjunatha Cotton and Ginnig Factory & Ors. (2013) 359 ITR 565
- Apex Court decision in the case of CIT & Anr. Vs. M/s SSA's Emerald Meadows in CC No. 11485/2016 dated 05.8.2016.

In view of above, he requested that the penalty in dispute may be cancelled and appeal of the assessee may be allowed.

6. On the contrary, Ld. DR relied upon the orders of the authorities below and also filed the written submissions, which are reproduced hereunder:-

"Sub: Written Submission in the above case- reg.

In the above case, it is humbly submitted that the following decisions may kindly be considered:

1. *Union of India v. pharamendra Textile Processors* [(2007) 295 ITR 244] (Copy Enclosed) where Hon'ble Supreme Court held that Penalty under section 271 (1)(c) is a civil liability for which willful concealment is not an essential ingredient for attracting the civil liability as is the case in the matter of proceedings under section 276C

2. *CIT Vs Zoom Communication (P.) Ltd.* [191 Taxman 179 (Delhi)/[2010] 327 ITR 510 (Delhi)/[2010] 233 CTR 465] where Hon'ble Delhi High Court held that If assessee makes a claim which is not only incorrect in law, but is also wholly without any basis and explanation furnished by him for making such- a claim is. not found to be bona fide, Explanation 1 to section 271 (1)(c) would come into play and assessee will be liable to penalty

3. *CIT Vs Moser Baer India Ltd.* (184 Taxman 8 (SC)/[2009] 315 ITR 460

(SC)/[2009] 222 CTR 213) (Copy Enclosed) where Hon'ble Supreme Court confirmed Penalty under section 271 (1)(c) for wrong adjustment of Unabsorbed Depreciation.

4. *CIT Vs Gold Coin Health Food (P.) Ltd* (172 Taxman 386 (SC)/[2008] 304 ITR 308 (SC)/[2008] 218 CTR 359)

(Copy Enclosed) where Hon'ble Delhi Supreme Court held that amendment made in Explanation 4 to section 271(1)(c)(iii) with effect from 1-4-2003 is clarificatory and, therefore, will have retrospective effect

5. *CIT vs. Gates Foam & Rubber Co [91 ITR 467] CIT vs India Seafood [105 ITR 708] where Hon'ble Kerala High Court held that Claiming excessive deduction also amounts to concealment of income*

6. *Steel Ingots Ltd vs. CIT [296 ITR 228] where Hon'ble Madhya Pradesh High Court held that in case of concealment of true income chargeable. to tax by making bogus claim, levy of penalty u/s 271 (1)(c) read with Explanation 1 is justified*

7. *CIT Vs Escorts Finance Ltd [183 Taxman 453 (Delhi)/[2010] 328 ITR 44 (Delhi)/[2009] 226 CTR 105] where Hon'ble Delhi High Court held that if claim made in return of income appears to be ex facie bogus, it would be treated as a case of concealment or furnishing of inaccurate particulars and penalty proceeding would be justified."*

7. We have heard both the parties and perused the orders passed by the Revenue Authorities alongwith the relevant records available with us especially the assessment order, penalty order and the written submissions filed by the Ld. DR. After perusing the aforesaid records, we are of the considered view that in the assessment order dated 03.2.2014 passed u/s. 143(3) of the Act, the AO while completing the assessment initiated the penalty proceedings u/s. 271(1)© of the Act for concealment of income and for furnishing of inaccurate particulars within the meaning of explanation 1 to the sub-section (1) of section 271(1)(c) of the I T. Act. We further note that similarly in the penalty order dated 27.8.2014 the AO has observed that the act of the assessee was a deliberate act to evade the tax on amount of Rs. 3,20,377/- and an act committed for concealment of the particulars of his income and furnishing inaccurate particulars of his income and imposed the penalty of Rs. 98,996/- u/s. 271(1)© of the Act on the amount added for which inaccurate particulars has been furnished. In view of the above, in our considered opinion, the entire penalty proceedings stand vitiated because the assessment order as well as penalty order are not sustainable in the eyes of law, in view of the following case laws.

- i) "CIT & Anr. Vs. M/s SSA's Emerald Meadows – 2015 (11) TMI 1620 – Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with

Section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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) (7) TMI 620- Karnataka High Court. Thus 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 – decided in favour of assessee.”

- ii) CIT & Anr. Vs. M/s SSA's Emerald Meadows – Hon'ble Supreme Court of India – reported in 2016 (8) TMI 1145 – Supreme Court. The Apex Court held that High Court order confirmed (2015) (11) TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 – Decided in favour of assessee.”

7.1 In the background of the aforesaid discussions and respectfully following the precedents, we delete the penalty in dispute on the legal

ground itself and decide the issue in favor of the assessee and against the Revenue. Since we have deleted the penalty on the legal ground itself and did not discuss the penalty issue on merit, hence, the case laws cited by the Ld. DR are not useful at this juncture, because these case laws are on the merits of the case, which we have not discussed.

8. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the Open Court on 05/10/2017

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 05/10/2017

SRBhatnagar

Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4. CIT (A) 5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches