

IN THE INCOME TAX APPELATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 6303/Del/2016

A.Y. : 2000-01

M/S CREATIVE TRAVEL PVT. LTD.,
27-30, CREATIVE PLAZA,
NANAKPURA,
MOTI BAGH,
NEW DELHI – 110 021
(PAN: AAACC0874D)
(Appellant)

vs. ACIT, Circle 6(2),
NEW DELHI

(Respondent)

Assessee by : Sh Salil Aggarwal & Sh. Shailesh
Gupta, Advocates
Department by : Sh V.K. Jiwani, Sr. DR

ORDER

This appeal by the Assessee is directed against the Order of the Ld. Commissioner of Income Tax (Appeals)-35, New Delhi dated 03.10.2016 pertaining to assessment year 2000-01.

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

1. *That the learned Commissioner of Income Tax has (Appeals) has grossly erred both in law and on facts in sustaining the imposition of penalty under section 271(1)(c) of the Income Tax Act amounting to Rs. 10,41,586/-.*

2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that, there was neither furnishing of any inaccurate particulars of income nor could it be validly held that there was any concealment of income on the facts of the case, neither there was any satisfaction by learned assessing officer regarding furnishing of inaccurate particulars or concealment of income and as such, the penalty so levied is unsustainable in law and is liable to be deleted as such.

2.1 That further the learned Commissioner of Income Tax (Appeals) has ignored the basic fact that penalty proceedings are separate and independent proceedings, thus, reliance placed solely on the order of assessment is wholly misconceived and misplaced. in law and as such the penalty order is liable to be quashed as such.

3. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in overlooking the basic fact that the denial of deduction under section 80 HHD of the Act on account of pocket expenses of a sum of Rs. 26,71,040/-, was bona fide claim made by assessee - appellant and as such, there was no occasion to sustain the penalty levied on the additions which have already been deleted by Hon 'ble Tribunal.

4. That the learned Commissioner of Income Tax (Appeals) has grossly erred in law and on facts in sustaining order of penalty without going into the merits of the claim and also without affording proper opportunity to the appellant company to present its case and thus, the

penalty sustained is grossly in violation of principles of natural justice and should be quashed as such."

3. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

4. At the time of hearing, Ld. Counsel of the Assessee has stated that no specific allegation as to the concealment of particulars of income or furnishing of inaccurate particulars has been levied by the AO in the notice dated 28.2.2006 issued by him u/s. 271(1)© of the Act placed on file which clearly shows that the same is the standard format of the notice and AO has just ticked on the option of concealment of income or furnishing inaccurate particulars of such income. He further stated that the penalty imposed is liable to be quashed on legal grounds as the issue is squarely covered by the following decisions.:

- ITAT, Delhi decision in the case of ABR Auto Pvt. Ltd. vs. ACIT in ITA No. 6236/Del/2015 dated 4.12.2017.
- ITAT, A Bench, New Delhi decision dated 05.12.2017 in the case of Ashok Kumar Chordia vs. DCIT passed in ITA No. 5788 to 5790/Del/2014.
- 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.

5. On the contrary, Ld. DR relied upon the orders of the authorities below.

6. I have heard both the parties and perused the relevant records, especially the orders of the revenue authorities alongwith the provisions of law as well as the case law cited by the Ld. Counsel of the Assessee. I have also perused the Notice dated 28.2.2006 issued by the AO for initiation of penalty and directing the assessee to appear before him. For the sake of convenience, some of the contents of the penalty Notice dated 28.2.2006 are reproduced as under:-

“.....it appears to me that you:-

~~*have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961 dated.....~~

*** have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2, 3, 4, and 5.....”**

6.1 After perusing the aforesaid contents of the Notice dated 28.2.2006, I am of the view that the AO has initiated the penalty for concealment of particulars of income or furnishing of inaccurate particulars, which is contrary to the provisions of law. I am of the view that notice issued by the AO u/s. 271(1)© read with Section 274 of the Act is bad in law as it does 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. Therefore, the penalty in dispute is not sustainable in the eyes of law, hence, I cancel the penalty in dispute. My aforesaid view is supported by the following decisions:-

- 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.”
- iii) ITAT, 'A' Bench, New Delhi decision dated 05.12.2017 in the case of Ashok Kumar Chordia vs.

DCIT passed in ITA No. 5788 to 5790/Del/2014 wherein the Tribunal has observed as under:-

"7. We have heard both the parties and perused the orders passed by the Revenue Authorities alongwith the relevant records available with us. Firstly, we have perused the Notice dated 26.3.2013 issued by the AO for initiating the penalty and directing the assessee to appear before him at 11.30 AM on 26/04/2013 and issued a Show Cause to the assessee stating therein that **".....you have concealed the particulars of your income or furnished inaccurate particulars of such income..."**. After perusing the notice dated 26.3.2013 issued by the AO to the assessee, we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income or concealment of income as well as in the penalty order dated 30.9.2013 AO has stated that he is satisfied that the assessee has concealed particulars of his income, which is contrary to law. In view of above, the penalty is not sustainable in the eyes of law. Our aforesaid view is fortified by the following decisions:-

- 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.”

8. In the background of the aforesaid discussions and respectfully following the precedents, we delete the penalty in dispute and decide the issue in favor of the assessee and against the Revenue.”

- iv) ITAT, 'D' Bench New Delhi decision dated 26.5.2017 in the case of Rajender Jain vs. ACIT passed in ITA No. 6804/Del/2013 wherein the Tribunal has observed as under:-

"7. We have heard both the parties and perused the orders passed by the Revenue Authorities alongwith the relevant records available with us. Firstly, we have perused the assessment order wherein the AO has recorded his satisfaction on the page 2, 2nd para viz. "I am satisfied that it is a fit case for initiation of penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income/concealment of income." We have also perused the notice dated 31.12.2007 issued by the AO for initiating the penalty and

directing the assessee to appear before him at -----AM/PM on -----200----- and issued a Show Cause to the assessee stating therein that why an order imposing the penalty of amount should not be made u/s. 271(1)(c) of the I.T. Act, 1961. After perusing the notice dated 31.12.2007 issued by the AO to the assessee, we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income/concealment of income, but in the penalty order dated 06.11.2009 he has stated that he is satisfied that the assessee has furnished the inaccurate particulars of income.

7.1 However, the Ld. CIT(A) has given clear finding regarding the furnishing of inaccurate particulars. For the sake of convenience, the relevant para no. 5.3.1 of the impugned order passed by the Ld. CIT(A) is reproduced as under:-

"5.3.1 The above findings of the Ld. CIT(A) clearly establishes that the appellant has concealed the income of Rs. 26,50,500/- and did not declare in the return of income inspite of admitting a disclosure of Rs. 40,00,000/- during survey. Thus, the appellant has furnished inaccurate

particulars of his income. The facts of the case clearly reveal that the appellant tried to evade payment of taxes by furnishing inaccurate particulars of income. Therefore, I hold that the AO was fully justified in levying the penalty u/s. 271(1)(c) of the Act. The penalty levied by the AO is upheld. This ground of appeal is rejected."

8. *Keeping in view of the aforesaid finding of the Ld. CIT(A), we are of the considered view that the AO has passed the assessment order wherein the AO has recorded his satisfaction on the page 2, 2nd para viz. "I am satisfied that it is a fit case for initiation of penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income/concealment of income." Further the AO vide his Notice dated 31.12.2007 for initiating the penalty and directed the assessee to appear before him at -----AM/PM on ---- ----200----- and issued a Show Cause to the assessee stating therein that why an order imposing the penalty of amount should not be made u/s. 271(1)(c) of the I.T. Act, 1961. After perusing the notice dated 31.12.2007 issued by the AO to the assessee, we are of the view that the AO has initiated the penalty*

for furnishing inaccurate particulars of income/concealment of income, but in the penalty order dated 06.11.2009 he has stated that he is satisfied that the assessee has furnished the inaccurate particulars of income. In our view the penalty in dispute is not sustainable in the eyes of law, because the AO has not recorded any clear finding whether the assessee was guilty of concealment of income or furnishing of inaccurate particulars of income. Secondly, the notice u/s. 271(1)(c) has been issued to the assessee levying the penalty for furnishing of inaccurate particulars of income/concealment of income, whereas the penalty in dispute has been levied by the AO on account of furnishing of inaccurate particulars. In our view the penalty is not sustainable in the eyes of law. Our aforesaid view is fortified by the following decisions:-

- 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.”

8.1 In the background of the aforesaid discussions and respectfully following the precedents, we delete the penalty in dispute and decide the issue in favor of the assessee and against the Revenue.”

7. Keeping in view of the aforesaid discussions, I cancel the penalty in dispute by respectfully following the aforesaid decisions and allow the appeal of the assessee.

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

Order pronounced on 12/03/2018.

Sd/-

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

Date: 12/03/2018

SRBhatnagar

Copy forwarded to: -

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

Assistant Registrar, ITAT, Delhi Benches