

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'G', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA Nos. 6453, 6454 & 6455/Del/2016
(Assessment Years : 2010-11, 2011-12 & 2012-13)

Sh. Satinder Pal Singh D-97, Defence Colony, New Delhi – 110024	Vs.	ACIT, Central Circle – 3, New Delhi
PAN No. AAAPS 4461 K		
(APPELLANT)		(RESPONDENT)

Assessee by	--None--
Revenue by	Shri H K. Chaudhary, CIT-D.R.

Date of hearing:	12/07/2021
Date of Pronouncement:	20/07/2021

ORDER

PER BENCH:

These three appeals filed by the assessee are directed against the order dated 30.09.2016 passed by the Commissioner of Income Tax (Appeals)-25, Delhi relating to Assessment Years 2010-11, 2011-12 & 2012-13.

2. The case file reveals that there was no appearance on behalf of the assessee in the past. Even on the date of hearing, none

appeared on behalf of the assessee nor any adjournment application was filed. Further the present appeal being an old appeal filed in 2016 and considering the aforesaid facts, we proceed to dispose of the appeal *ex parte* qua the assessee after considering the material on record and after hearing by the Learned DR.

3. Before us, at the outset, Learned DR submitted that the issue involved in all the three appeals are identical except for the year and amounts involved. In view of the aforesaid submission of Learned DR, we for the sake of convenience proceed to dispose of all the three appeals by a consolidated order but for the sake of reference refer to the facts for A.Y. 2010-11 in ITA No.6453/Del/2016.

4. The relevant facts as culled from the material on records are as under :

5. A search & seizure action u/s 132 of the Act in the case of M/s. Jay Polychem India Ltd. and its associates was initiated on 14.03.2012. AO has noted that the main persons controlling the group were Shri Satinder Singh Madhok & his brother Shri Sandeep Singh Madhok. The case of the assessee was also covered u/s 132 of the Act. Consequent to the search action, notice u/s 153A was issued to the assessee and in response to which assessee filed his return of income for A.Y. 2010-11, declaring income of Rs. 1,04,03,178/- on 18.12.2012. Thereafter,

the case was taken up for scrutiny and assessment was framed u/s 153A r.w.s 144 of the Act and the total income was determined at Rs. 22,48,03,670/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who granted partial relief to the assessee. On the additions made by AO and that were upheld by CIT(A), AO vide penalty order dated 21.03.2016 levied the penalty of Rs.3,57,34,853/- u/s 271(1)(c) of the Act.

6. Aggrieved by the penalty order passed by the AO, assessee carried the matter before the CIT(A) who vide order dated 30.09.2016 in Appeal No.53/16-17/151/16-17 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds of appeal:

1. *“That the Ld. CIT(A) has erred in sustaining the penalty alleging that he appellant did not comply deliberately even though the ld CIT(A) was specifically requested that the quantum has been heard and time be given.*
2. *That the ld CIT(A) has erred in not following the principles of natural justice by not allowing the appellant a reasonable opportunity of being heard when it was specifically requested.*
3. *That the Ld CIT(A) has erred in sustain the penalty of Rs.3,57,34,853/- imposed u/s 271(1)(c) of the Act without appreciating the facts of the case and detailed submissions made by the appellant.*
4. *That the ld CIT(A) has erred in not adjudicating Ground Nos.2 & 3 raised before him.*
5. *That the order imposing penalty is bad in law and void ab initio since in the show cause notice issued u/s 274 read with section 271 the ld AO has not struck off the irrelevant*

clause of the notice, meaning thereby the AO has not apprise the assessee about the specific charge, under which assessee has been held guilty of penal action.

6. *The appellant craves leave to add, alter, remove and modify any grounds of appeal, which are without prejudice to one another, before or at the time of hearing of the appeal.”*

7. Though various grounds have been raised by the assessee, we find that the sole controversy is w.r.t levy of penalty u/s 271(1)(c) of the Act.

8. Before us, Learned DR supported the order of lower authorities and pointing to the findings of CIT(A) submitted that CIT(A) has given a finding that assessee had made claims which were wholly untenable in law, without any basis and the explanations furnished by the assessee were without any basis. In such a situation, the AO was fully justified in levying penalty u/s 271(1)(c) of the Act. He therefore submitted that CIT(A) has rightly confirmed the levy of penalty. He thus supported the order of CIT(A).

9. We have heard the Learned DR and perused the material on record. The issue in the present ground is with respect to the upholding of levy of penalty u/s 271(1)(c) of the Act by CIT(A). The AO has levied penalty u/s 271(1)(c) of the Act on the additions made by him and upheld by CIT(A). As per the provisions of Section 271(1)(c), if the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the

course of any proceedings under the Act is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct such person shall pay by way of penalty, in addition to the tax payable by him, a sum which shall not be less than but which shall not exceed three times the amount of tax sought to be evaded by reason of concealment of particulars of his income or furnishing of inaccurate particulars of such income. Thus the two key expressions which comprises of two limbs for imposition of penalty u/s 271(1)(c) of the Act are “concealment of particulars of his income” & “furnishing inaccurate particulars of such income”. It is a settled law that while levying penalty for concealment, the AO has to record satisfaction and thereafter come to a finding in respect of one of the limbs which is specified u/s 271(1)(c) of the Act, namely, whether the assessee has concealed the income or furnished inaccurate particular of income. Thus the first step is to record satisfaction and come to a finding while completing the assessment as to whether the assessee has concealed its income or furnished inaccurate particulars of income. The AO thereafter has to levy penalty u/s 271(1)(c) of the Act for non-satisfaction of either of the limbs which gets attracted. Thereafter, notice u/s 274 r.w.s 271(1)(c) of the Act is to be issued to the assessee. The aforesaid notice should specifically indicate on what ground penalty is sought to be imposed, whether for concealment of income or for furnishing of inaccurate particulars of income. In the present case, the perusal of assessment order passed by the AO reveals that in the assessment order, no specific finding has

been recorded by the AO as to whether it is a case of concealment of income or a case of furnishing of inaccurate particulars of income. Further in the notice dated 31.03.2004 issued u/s 274 r.w.s 271 of the Act, the inapplicable portion or limb of section 271(1)(c) of the Act has not been struck off. It is a settled law that the two limbs i.e. “concealment of particulars of income” and “furnishing of inaccurate particulars of income” carry different connotations. Various High Courts have held that AO must indicate in the notice for which of the two limbs he proposes to impose the penalty and for this the notice has to be appropriately marked. If in a printed format of the notice the inapplicable portion is not struck off thus not indicating for which limb the penalty is proposed to be imposed, it would lead to an inference as to non application of mind, thus vitiating imposition of penalty.

10. We find that Hon'ble Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Co. Ltd. (2021) 432 ITR 84 (Del), after considering the decision in the case of CIT vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Kar) & CIT vs. SSA's Emerald Meadows (2016) 73 Taxman.com 241 (Kar) [where the SLP filed by Revneue was dismissed and reported in (2016) 386 ITR (ST) 13 (SC)] has held that penalty u/s 271(1)(c) was not leviable when the notice issued by AO did not specify as to whether the proceedings were initiated for concealment of particulars of income or for furnishing of inaccurate particulars of income. The relevant portion of the findings of Hon'ble High Court

in the case of Sahara India Life Insurance Co. Ltd. (supra) reads 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.”

11. Before us, Revenue has not placed any material on demonstrate that the aforesaid decision of Hon’ble Delhi High Court in the case of Sahara India Life Insurance Co. Ltd. (supra) has been stayed/ set aside/ overruled by higher judicial forum. Considering the totality of the aforesaid facts and relying on the aforesaid decision in the case of Sahara India Life Insurance Co. Ltd. (supra), we are of the view that the AO was not justified in levying penalty u/s 271(1)(c) of the Act. We accordingly set aside the levy of penalty levied by AO and **thus the ground of assessee is allowed.**

12. **In the result, the appeal of the assessee is allowed.**

13. As far as levy of penalty u/s 271(1)(c) of the Act for A.Y. 2011-12 & 2012-13 is concerned, before us, Learned DR has fairly admitted that the facts in these years are identical to that of A.Y. 2010-11. We for the reasons stated hereinabove have deleted the levy of penalty for A.Y. 2010-11. We for similar reasons as stated hereinabove hold that no penalty u/s 271(1)(c) was leviable for A.Y. 2011-12 & 2012-13. We accordingly set aside the penalty. **Thus the grounds of assessee are allowed.**

14. **In the combined result, all the three appeals of the assessee are allowed.**

Order pronounced in the open court on 20.07.2021

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Date:- 20.07.2021

PY*

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI