

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.369/Del./2018
(Assessment Year : 2014-15)**

Addl.CIT, Spl. Range 1,
New Delhi.

vs. M/s. Airports Authority of India,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi – 110 003.

(PAN : AAACA6412D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Anil Kathuria, Advocate
REVENUE BY : Shri Bhoop Singh, Senior DR

Date of Hearing : 04.08.2021
Date of Order : 13.08.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Addl.CIT, Spl. Range 1, New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 11.09.2017 passed by the Commissioner of Income-tax (Appeals)-32, New Delhi confirming the penalty order dated 23.06.2017 passed under section 271(1)(c)

of the Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2014-15 on the grounds inter alia that :-

“On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting penalty of Rs.1,65,52,880/- imposed by the AO u/s 271(1)(c) of the Income-tax Act, 1961.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment framed under section 143(3) of Act, penalty proceedings have been initiated for furnishing of inaccurate particulars of income to the tune of Rs.4,86,99,262/- while claiming Research & Development (R&D) expenditure, which the Assessing Officer (AO) has treated to be capital in nature by disallowing the same. Declining the contentions raised by the assessee that none of the inaccurate particulars have been furnished while claiming deduction of Rs.4,86,99,262/- on account of R&D expenses and thereby levied the penalty to the tune of Rs.1,65,52,880/-.

3. Assessee carried the matter before the Id. CIT (A) by way of filing appeal who has deleted the penalty by allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, the assessee is a public sector undertaking and maintaining 125 airports comprising 68 operational airports, 25 civil enclaves i.e. Civil Air Terminals at Defense controlled airports and 31 non-services at all civil airports in the country. It is also not in dispute that the assessee has claimed to have incurred expenditure of Rs.5.41 crores as expenses on R&D. It is also not in dispute that assessee has set up R&D centre at Hyderabad during the year under assessment. AO treated the payment made for R&D expenditure as part of setting up the said R&D centre at Hyderabad. It is also not in dispute that the AO treated all the expenditure claimed by the assessee to be capital in nature by allowing an amount of Rs.54,11,029/- i.e. 10% as depreciation and made addition of the remaining amount of Rs.4,86,99,262/-.

6. Taking into account the aforesaid undisputed facts and circumstances of the case, Id. CIT (A) deleted the penalty by returning following findings :-

“5.3 It is also observed from the available records that the initiation of the penalty u/s 271 (1)(c) was made in the order u/s 143(3) under the limb 'furnishing inaccurate particulars of income'. In fact, it is gathered from the appellant's submissions filed during the course of the present appeal that penalty u/s 271 (1)(c) was imposed by the impugned order although the appellant had submitted all details regarding its claim of deduction of expenses. It is also observed from the plethora of judicial

precedents relied upon by the appellant that complete details filed in the return of income and its accompanying documents in a bona fide manner would take a case away from the clutches of penalty u/s 271 (1)(c) especially the limb - 'furnishing inaccurate particulars of income' in spite of the fact that the claim of deduction is not legally tenable. The principle behind this limb, u/s 271(1)(c), is the necessity of contumacious conduct of the assessee, which in my view, is absent in the present case. The appellant has disclosed its claim and has also revised it in its revised return filed well in time. Again, the fact that the appellant is a Government of India enterprise and in my view, the ratio as laid in CIT V. Senior Accounts Officer, Madhya Pradesh Electricity Board [2005J 276 ITR 84 (MP)(supra) also squarely applies to the facts of the present case. Also, in Steel Authority of India Ltd. vs. ITO [ITD 100, 029/ TTJ 107, 372, ITAT Nagpur (supra) relied upon by the appellant, it is held inter alia, "There could be no personal gain to assessee as it is a Government company and therefore, allegation in the orders of Lower Authorities as to mala fide intention are not justified ... ". Further, during the course of appellate proceedings, the appellant's AR relied on the orders of the first appellate authority in its own case for the AY 2010-11 vide appeal order No. 254/16-17 (dated 161082017), wherein penalty levied u/s 271(1)(c) has been cancelled following the reasoning that "Since, appellant has disclosed necessary facts"

5.4 *It is also observed from the available records that the initiation of the penalty u/s 271(1)(c) was made in the order u/s 143(3) under the limb 'furnishing inaccurate particulars of income' while in the notice u/s 274 there is no tick mark on the appropriate limb (or striking off of the inappropriate limb) as required u/s 271 (1)(c) and finally, the penalty is imposed for 'furnishing inaccurate particulars of income' (as understood from the impugned order).*

5.5 *Thus, from the above paras it can be inferred that the disallowances of the appellant's claims of expenditure were on not satisfying the stipulated conditions for their allowability under the Act, i.e. u/s 37 of the Act. Such disallowances, in my opinion, can hardly come under the ambit of Section 271(1)(c) of the Act as these are mere disallowances of claims- the present case falls neither under the limb 'concealment of particulars of income' nor under the limb 'furnishing inaccurate particulars of such income'. Further, in view of similar circumstances in the AY 2010-11, I am in agreement with the reasoning of the decision of the CIT (A) in his appellate order referred to above. As the AR's submission at the appellate stage is borne out from records and is in sync with the extant law on the issue, I am in agreement with the arguments adduced by the appellant against the imposition of penalty u/s 271(1)(c). Accordingly, with due*

deference to the decision of the Apex Court in CIT vs. Reliance Petro Products Pvt. Ltd. 322 ITR 158 (SC) and in CIT vs. SSA'S Emerald Meadows (SC) [2016]73 taxmann.com 248 wherein SLP of the Department against the decision of the Hon'ble Karnataka HC in CIT vs SSA's Emerald Meadows (ITA No. 380/2015) was dismissed vide its order dated 26.09.2016, the penalty (of Rs.1,65,52,880/-) levied vide the impugned order is cancelled.”

7. Perusal of the order passed by the ld. CIT (A) shows that the ld. CIT(A) deleted the penalty on two grounds : (i) that no valid notice u/s 274 of the Act has been issued to the assessee so as to inform the assessee as to under which limb of section 271(1)(c) penalty proceedings have been initiated; and (ii) that disallowances of claim made by the assessee for incurring expenditure on account of R&D does not come under the purview of section 271(1)(c) of the Act and relied upon the decisions rendered by **Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd. 322 ITR 158 (SC) and CIT vs. SSA's Emerald Meadows (2016) 73 taxmann.com 248.**

8. Ld. DR for the Revenue except for relying upon the order passed by the AO has failed to bring on record if valid notice u/s 271(1)(c) read with section 274 of the Act was issued to the assessee and that mere claim of expenditure by the assessee if disallowed does not amount to furnishing of inaccurate particulars of income or concealing particulars of income during assessment proceedings.

9. Hon'ble Apex Court in case of **CIT vs. SSA's Emerald Meadows - (2016) 73 taxmann.com 248 (SC)** while dismissing the SLP filed by the Revenue quashing the penalty by the Tribunal as well as Hon'ble High Court on ground of unspecified notice has held as under:-

“Section 274, read with section 271(1)(c), of the Income-tax Act, 1961 - Penalty - Procedure for imposition of (Conditions precedent) - Assessment year 2009-10 - Tribunal, relying on decision of Division Bench of Karnataka High Court rendered in case of CIT v. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565/218 Taxman 423/35 taxmann.com 250, allowed appeal of assessee holding that notice issued by Assessing Officer under section 274 read with section 271 (1)(c) was bad in law, as it did not specify under which limb of section 271 (1)(c) penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income - High Court held that matter was covered by aforesaid decision of Division Bench and, therefore, there was no substantial question of law arising for determination - Whether since there was no merit in SLP filed by revenue, same was liable to be dismissed - Held, yes [Para 2] [In favour of assessee]”

10. Hon'ble Delhi High Court in case of **Pr. CIT vs. Sahara India Life Insurance Company Ltd.** (supra) while deciding the identical issue 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.”

11. Following the decisions rendered in the cases of **CIT vs. SSA's Emerald Meadows and Pr. CIT vs. Sahara India Life Insurance Company Ltd.** (supra), we are of the considered view that when the notice issued by the AO is bad in law being vague and ambiguous having not specified under which limb of section 271(1)(c) of the Act the same has been issued, the penalty proceedings initiated u/s 271(1)(c) are not sustainable.

12. Hon'ble Apex Court in case of **Reliance Petro Products Pvt. Ltd. - 322 ITR 158 (S.C.)** held that, "*by no stretch of imagination can making an inaccurate claim tantamount to furnishing of inaccurate particulars when none of the information given in the return is found to be incorrect or inaccurate.*" In the instant case, it was a mere case of difference of opinion taken by the AO.

13. In view of what has been discussed above, we are of the considered view that there is no perversity or infirmity in the impugned order passed by the Id. CIT (A), hence appeal filed by the Revenue is dismissed.

Order pronounced in open court on this 13th day of August, 2021.

**SD/-
(O.P. KANT)
ACCOUNTANT MEMBER**

**SD/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 13th day of August, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-22, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.