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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Decision delivered on: 31.07.2023**

+ **ITA 415/2023**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appellant

Through: Mr Sanjay Kumar, Senior Standing
Counsel with Ms Easha Kadian and
Ms Hemlata Rawat, Advocates.

Versus

M/S BHUDEVA ESTATE PVT. LTD. Respondent

Through: Ms Monika Aggarwal with Mr
Gautam Jadav and Mr Ajay Kumar
Jha, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM APPL. 38411/2023 [*Application filed on behalf of the
appellant/revenue seeking condonation of delay of 21 days in filing the
appeal*]

CM APPL. 38412/2023 [*Application filed on behalf of the
appellant/revenue seeking condonation of delay of 60 days in re-filing the
appeal*]



1. These are applications seeking condonation of delay in filing and re-filing.
2. According to the appellant/revenue, there is a delay of 21 days in filing of the appeal and 60 days in re-filing of the appeal.
3. Counsel for the respondent/assessee submits that they would have no objection if the delay is condoned.
4. It is ordered accordingly.
5. The applications shall stand disposed of, in the aforesaid terms.

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6. The above-captioned appeal concerns Assessment Year (AY) 2008-09.
7. *Via*, this appeal, the appellant/revenue seeks to assail the order dated 06.09.2022 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].
8. The Tribunal *via* the impugned order dismissed the appeal of the appellant/revenue preferred against order dated 30.01.2020 passed by the Commission of Income Tax (Appeals) [in short, “CIT(A)”].
9. The CIT(A) has set aside the penalty order dated 31.03.2017 passed under Section 271(1)(c), read with Section 274 of the Income Tax Act, 1961 [in short, “the Act”] passed by the Deputy of Commissioner of Income Tax [in short, “DCIT”].
10. Both the Tribunal and the CIT(A) set aside the penalty order on the ground that the notice issued to the respondent/assessee with regard to imposition of penalty did not specify the appropriate limb under which the penalty is sought to be imposed. In other words, the notice did not specify as



to whether the penalty was being imposed for concealment of income or for furnishing inaccurate particulars.

11. This question, recently, came up before the coordinate bench of which one of us [i.e., Rajiv Shakhder, J.] was a member in ***Pr. Commissioner of Income Tax-3 vs. Minu Bakshi*** 2022:DHC:2814-DB wherein, the following was observed:

7. In our opinion, the conclusion reached by the Tribunal in the instant case that the notice for imposition of penalty under Section 271(1) (c) of the Act, did not specify which limb of the said provision the penalty was sought to be levied, is covered by the following decisions, which includes a decision rendered by a coordinate bench of this Court.

(i) CIT and Anr. v M/s SSA's Emerald Meadows, passed in ITA No. 380/2015, dated 23.11.2015.

(ii) Commissioner of Income Tax v Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Kar.)

(iii) PCIT vs M/s Sahara India Life Insurance Company Ltd., passed in ITA No.475/2019, dated 02.08.2019.

7.1. To be noted, the Special Leave Petition filed against the judgement in SSA's Emerald (mentioned above) was dismissed via order dated 05.08.2016.

7.2. We are in agreement with the view taken by the Karnataka High Court in the above-mentioned judgements (in SSA's Emerald and Manjunatha Cotton) and, in any event, are bound by the view taken by the coordinate bench of this court in the Sahara India case”.

12. Having regard to the above, according to us, no substantial question of law arises, as it is not disputed that the notice issued to the respondent/assessee did not specify, clearly, the charge levelled against the respondent/assessee which triggered the process of imposition of penalty.



13. Accordingly, the appeal is closed.
14. Pending applications shall also stand closed.

**RAJIV SHAKDHER
JUDGE**

**GIRISH KATHPALIA
JUDGE**

JULY 31, 2023/RV

Click here to check corrigendum, if any