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

% **Decision delivered on: 24.11.2023**

+ **ITA 658/2023 & CM APPL. 60761/2023**

PR. COMMISSIONER OF INCOME TAX
DELHI 1

..... Appellant

Through: Mr Sanjeev Menon, Standing
Counsel.

versus

M/S BLACKROAK SECURITIES PVT LTD Respondent

Through: Mr Salil Kapoor, Mr Sumit
Lalchandani and Mr Shivam Yadav,
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):

1. This appeal concerns Assessment Year (AY) 2014-15.
2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 05.05.2020 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. The Tribunal, *via* the impugned order, had set aside the findings of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] and directed the Assessing Officer (AO) to delete the penalty amounting to Rs. 7,99,90,570/-.



4. The reason given by the Tribunal in setting aside the order of the CIT(A) was that the AO, while initiating penalty proceedings under Section 271(1)(c) of the Act, should have alluded to the limb under which penalty is proposed to be levied.

4.1 In other words, the AO should have stipulated as to whether the penalty was proposed to be imposed on the respondent/assessee for concealment of particulars of its income, or furnishing inaccurate particulars.

4.2 Both limbs find mention in Section 271(1)(c) of the Act.

5. In the impugned order, the Tribunal notes that a lack of clarity was apparent upon perusal of paragraph four (4) of the penalty order.

5.1 We can do no better than to extract paragraph four (4) of the penalty order, as embedded in paragraph seven (7) of the impugned order passed by the Tribunal:

*“Since, the above additions were treated as **concealment of income/furnishing inaccurate particulars of income by the assessee**, a notice u/s: 274 r.w.s. 271 (1)(c) of the Income Tax Act 1961 dated 28.12.2016 and 14.06.2017 were issued and duly served -upon the assessee company. The AR of the assessee company filed its reply to the notice vide letter dated 23.06.2016. The penalty proceedings u/ s 271(1) (c) are decided on the basis of the income tax provisions, judicial pronouncements and the material available on record and the submission of the assessee.”*

[Emphasis is ours]

6. According to us the view taken by the Tribunal is correct. The respondent/assessee was entitled to know, clearly, the charge levelled against it. This view finds resonance in the following judgments rendered by the court *qua* the issue at hand:



- (i) *Pr. CIT vs Minu Bakshi*, 2022:DHC:2814-DB.
- (ii) *Pr. CIT vs Unitech Reliable Projects Pvt. Ltd.* 2023:DHC:4258-DB.
- (iii) *Pr. CIT vs Gopal Kumar Goyal* (2023) 153 taxmann.com 534 (Del).
- (iv) *Pr. Commissioner of Income Tax-1 vs Ansal Properties and Infrastructure*, 2023:DHC:5443-DB.
- (v) *Pr. Commissioner of Income Tax (Central)-2 vs Bhudeva Estate Pvt. Ltd.*, 2023:DHC:5689-DB.
- (vi) *Commissioner of Income Tax (Exemptions) Delhi vs Jamnalal Bajaj Foundation*, 2023:DHC:5691-DB.
- (vii) *Pr. Commissioner of Income Tax Delhi (Central)-3 vs Shyam Sunder Jindal*, 2023:DHC:6138-DB.
- (viii) *Pr. Commissioner of Income Tax-6 vs Modi Rubber Ltd.*, 2023:DHC:7856-DB.

7. We may, for convenience, quote from one of the judgments i.e., *Unitech Reliable Projects Pvt. Ltd.*, which in our opinion, provides the rationale as to why it is necessary to indicate to the assessee the specific limb of Section 271(1)(c) of the Act under which penalty proceedings are triggered against him:

*“15. According to the Tribunal, the notice dated 14.03.2015 issued under Section 274 read with section 271(1)(c) of the Act did not specify, as to the limb under which penalty was sought to be imposed. In other words, the notice which was served on the respondent/assessee did not indicate, as to whether penalty was being levied on account of concealment of income, or for the reason that it had furnished inaccurate particulars. The Tribunal, based on the order of the Supreme Court in *CIT v SSA’s Emerald Meadows* [2016] 73 taxmann.com 248/242 Taxman 180, observed that the penalty proceedings would have to quashed.*

16. For the sake of convenience, the relevant part of the impugned order passed by the Tribunal is extracted as under:



“7.2 The Hon'ble Apex Court in case of *M/s. SSA's Emerald Meadows, (2016) 73 taxmann.com 248(SC)* dismissed the Special Leave Petition filed by the Revenue against the judgment rendered by Hon'ble High Court of Karnataka whereby identical issue was decided in favour of the Assessee. Operative part of the judgment in case of *M/s. SSA's Emerald Meadows (supra)* decided by Hon'ble High Court of Karnataka is reproduced below:-

"2. This appeal has been filed raising the following substantial questions of law:

(1) Whether, omission if [sic...of] assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.s. 271(1)(c) is bad in law and invalid in spite of the amendment of Section 271(1B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued, under Section 274 without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?

3. The Tribunal has allowed the appeal filed by the Assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') to be bad in law as it did not specify which limb of Section 271(1)(c) 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 upon the decision of the Division Bench of this Court rendered in the case of *COMMISSIONER or INCOME TAX -vs- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565*.

4. In our view, 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, in this appeal for determination by this Court, the appeal is accordingly dismissed."

[Emphasis is ours]

17. The Supreme Court in the aforesaid case, in fact, confirmed the view of the Karnataka High Court in said matter, which in turn had relied upon the judgment of its own Court in *Manjunatha Cotton & Ginning Factory, (2013) 359 ITR 565*.

18. Furthermore, the Tribunal also noted the coordinate bench judgement of this Court in *PCIT vs Sahara India Life Insurance Company Ltd. (2021) 432 ITR 84 (Del.)*.

19. We may note, that even the assessment order dated 14.03.2015, whereby penalty proceedings were triggered, did not indicate as to which limb of Section 271(1)(c) was being triggered qua the petitioner. This is evident from the following observation made by the AO:

“Penalty proceeding u/s 271(1)(c) is being initiated separately for concealment of income & for furnishing inaccurate particulars of income.”

20. We may note, that another coordinate bench of this Court, of



which one of us [i.e., Rajiv Shakti, J.] was a party has reached the same conclusion in *PCIT vs. Minu Bakshi* 222 (7) TMI 1370-Delhi.

21. Penalty proceedings entail civil consequences for the assessee. The AO is required to apply his mind to the material particulars, and indicate clearly, as to what is being put against the respondent/assessee when triggering the penalty proceedings.

22. In case the AO concludes, that a case is made out under Section 271(1)(c) of the Act, he needs to indicate, clearly, as to which limb of the said provision is attracted. The reason we say so is, that apart from anything else, the pecuniary burden may vary, depending on the infraction(s) committed by the respondent/assessee. In a given case, where concealment has taken place, a heavier burden may be imposed, than in a situation where an assessee is involved in furnishing inaccurate particulars.

23. Therefore, it is necessary for the AO to indicate, broadly, as to the provision/limb under which penalty proceedings are triggered against the assessee.

24. Clearly, this has not happened in the instant case.

25. As a matter of fact, even in the assessment order, whereby proceedings were triggered, there is no indication whatsoever, as to which limb of Section 271(1)(c) of the Act was triggered.

26. Thus, in the given circumstances, we are not inclined to interfere with the impugned order. According to us, the issue is well-traversed, and therefore, this appeal need not be entertained. No substantial question of law arises for our consideration.”

[Emphasis is ours]

8. As adverted to in the *Unitech Reliable Projects Pvt. Ltd.* case, the imposition of a penalty entails several consequences. The AO is required to apply his mind to the material and indicate, clearly, to the assessee what is being put against him. In other words, which limb of Section 271(1)(c) of the Act is attracted in the given facts and circumstances of the case.

9. It is our view, that this clarity would be necessary as the pecuniary burden that the assessee may be mulct with could vary, depending on the infraction committed by him.



10. Thus, in the given case, where concealment has taken place, a heavier burden may be imposed, as compared to the situation where the assessee furnishes inaccurate particulars. We may also make it clear that there may be circumstances where both limbs are attracted. If that is the situation, the notice should allude to this aspect.

11. Given the aforesaid circumstances, we are of the view that no substantial question of law arises for our consideration.

12. Accordingly, the appeal is closed.

13. Given the fact that the appeal is closed, the application for condonation of delay in re-filing, which is five hundred and twelve (512) days, is rendered infructuous.

14. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER
(JUDGE)

GIRISH KATHPALIA
(JUDGE)

NOVEMBER 24, 2023/R.Y

Click here to check corrigendum, if any