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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 18.08.2023

- + ITA 189/2023
- + ITA 190/2023
- + ITA 191/2023
- + ITA 192/2023

PR COMMISSIONER OF INCOME TAX DELHI (CENTRAL-3)

..... Appellant
Through: Mr Akshat Singh, Standing Counsel.

versus

SHYAM SUNDER JINDAL Respondent
Through: Mr Rohit Jain with Mr Aniket D. Agrawal, Advocates.

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. These appeals concern the following Assessment Years (AYs): AY 2011-12 (in ITA 189/2023), AY 2008-09 (in ITA 190/2023), AY 2010-11 (in ITA 191/2023) and AY 2009-10 (in ITA 192/2023).
2. *Via* these appeals, a challenge has been laid to the common order dated 24.06.2021 passed by the Income Tax Appellate Tribunal.
3. Counsel for the appellant/revenue does not dispute that none of the penalty notices issued to the respondent/assessee for the aforementioned



AYs advert to the specific limb of Section 271(1)(c) of the Income Tax Act, 1961 [in short, “the Act”] which is triggered against him.

4. In other words, it is not clear whether the Assessing Officer (AO) intended to levy a penalty on the respondent/assessee for concealment of particulars of his income, or furnishing inaccurate particulars. This issue is covered against the appellant/revenue in a catena of judgments, including the judgment rendered by the coordinate bench in the matter of ***Pr. Commissioner of Income Tax-3 v. Ms Minu Bakshi***. 2022:DHC:2814-DB.

4.1 The relevant observations made in the said judgment are extracted hereafter:

“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.”



5. This view has also been followed by this court in *Pr. Commissioner of Income Tax, Delhi-7 v. Unitech Reliable Projects Pvt. Ltd.*, 2023:DHC:4258-DB.

5.1 The following observations made in the *PCIT v. Unitech Reliable Projects Ltd.* case, being relevant insofar as this case is concerned, are extracted hereafter:

"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 Shakdher, 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.

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.

[Emphasis is ours]

6. In view of the foregoing, we are not inclined to admit these appeals, as according to us, no substantial question of law arises for our consideration.

7. Accordingly, the appeals are closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

AUGUST 18, 2023 / tr