

Ishita Technologies Pvt. Ltd., Delhi vs Dcit, New Delhi on 1 September, 2021

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

(THROUGH VIDEO CONFERENCE)

ITA No.2789/Del./2017
(Assessment Year : 2012-13)

M/s. Ishita Technologies Private Ltd., vs. DCIT, Circle 12 (2),
2/24, Ansari Road, Darya Ganj, New Delhi.
Delhi - 110 002.

(PAN : AACCI7147R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None
REVENUE BY : Shri Rajesh Kumar, Senior DR

Date of Hearing : 01.09.2021
Date of Order : 01.09.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Ishita Technologies Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 03.02.2017 passed by the Commissioner of Income-tax (Appeals)-18, New Delhi qua the assessment year 2012-13 confirming the penalty levied u/s 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') on the grounds inter alia that:-

"1.1 The order passed by the learned Commissioner of income tax (Appeals) - 18, New Delhi, to the extent prejudicial to the appellant is bad in law and liable to be quashed.

1.2 The learned Commissioner of Income tax (Appeals) - 18, New Delhi has erred in confirming the penalty of Rs.12,72,560/- levied under section 271 (f)(c). The order so passed being bad in law is liable to be quashed.

2.1 The learned Commissioner of Income tax (Appeals) - 18, New Delhi has erred in confirming the penalty levied by the learned assessing officer under section 271(1)(c)

without specifying in the notice under section 271 read with section 274 dated 20.03.2015, as to whether the penalty is leviable for concealment of income or for furnishing of inaccurate particulars of income. The order so passed under section 271(1)(c) is bad in law in view of the decision of the Karnataka High Court in the case of CIT v Manjunatha Cotton & Ginning Factory (2013) 35 taxmann.com 250 and CIT v SSAs Emerlad Meadows 73 taxmann.com 241 (SLP filed by the revenue has been dismissed by the Supreme Court 73 taxmann.com 248).

2.2 On the facts and circumstances, the order so passed by the learned Commissioner of Income tax (Appeals) - 18, New Delhi is bad in law and liable to be quashed.

3.1 The learned Commissioner of Income tax (Appeals) - 18 New Delhi has erred in confirming the action of AO who without arriving at a prima facie satisfaction as to the alleged concealment of income or furnishing of inaccurate particulars of income had levied penalty under section 271(1)(c).

3.2 The learned Commissioner of Income tax (Appeals)- 8 New Delhi has erred in not appreciating that the appellant having neither concealed' the particulars of income nor furnished inaccurate particulars of income, the levy of penalty under section 271(1)(c) read with Explanation 1 thereto is bad in law and liable to be quashed.

3.3 On facts and in the circumstances of the case and law applicable, the conditions for levying penalty under section 271(1)(c) being not satisfied, the order passed under section 271 (1)(c) is bad in law and liable to be quashed.

4.1 The learned Commissioner of Income tax (Appeals) - 18 New Delhi has erred in not appreciating that the entire basis, rationale for making disallowance and the consequential levy of penalty under section 271(1)(c) was bad in law and liable to be quashed.

5.1 The learned Commissioner of Income tax (Appeals) - 18 New Delhi has erred in not appreciating that

a) of the total disallowance of Rs.41,18,325/-, a sum of Rs.20,07,018/- was towards i) Fees for drafting/vetting of various commercial agreements between the assessee company and Indian parties and vendors such as Wholesale supply agreement (ii) Assets Purchase Agreement (iii) Software purchase agreement (iv) Platform License Agreement (v) Deed of assignment for trade mark, domain agreement, IP License Agreement (vi) directors employment agreements (vii) Accounting charges etc.

b) the disallowance of balance legal fee of Rs 21,11,3071- incurred towards drafting shareholders agreement and foreign direct investment is not free from doubt and capable of having two views.

6.1 In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the order passed by the learned Commissioner of Income tax (Appeals) - 18 New Delhi be quashed and the penalty levied under section 271(1)(c) be cancelled or deleted. The appellant prays

accordingly."

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 the Act vide order dated 20.03.2015 making an addition of Rs.41,18,325/- on account of expenses claimed but not found allowable, penalty proceedings have been initiated against the assessee for furnishing inaccurate particulars of income. Declining the contentions raised by the assessee, Assessing Officer (AO) proceeded to levy the penalty to the tune of Rs.12,72,563/- @ 100% of the tax sought to be evaded u/s 271(1)(c) of the Act.

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

4. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the Id. DR as well as on the basis of documents available on the file.

5. We have heard the Id. Departmental Representative for the Revenue/appellant 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.

6. Id. DR for the Revenue to repel the queries put-forth to him relied upon various decisions viz. Vijay Aggarwal vs. DCIT 2019-TIOL-1628-ITAT-DEL, Sundaram Finance Ltd. vs. CIT (2018) 99 taxmann.com 152 (SC), Sundaram Finance Ltd. vs. CIT (2018) 403 ITR 407 (Madras), CIT vs. Smt. Kaushalya (1995) 216 ITR 660 (Bom.), New Holland Tractors (India) (O) Ltd. vs. CIT (2015) 275 CTR 291 (Delhi), Trimuti Engineering Works vs. ITO (2012) 138 ITD 189 (Delhi), Hybrid Rice International Pvt. Ltd. vs. CIT in ITA No.285/Del/2007, Earthmoving Equipment Service Corporation vs. DCIT (2017) 166 ITD 113 (Mumbai), DCIT vs. Shah Rukh Khan (2018) 93 taxmann.com 320 (Mumbai-Trib.) etc. and contended that when in the assessment order relevant limb of section 271(1)(c) i.e. furnishing of inaccurate particulars of income has been invoked, it was sufficient to attract the provisions contained u/s 271(1)(c) of the Act. Id. DR also filed written submissions running into 12 pages which have been made part of the judicial record.

7. In the backdrop of the aforesaid facts and circumstances of the case, order passed by the lower authorities and arguments addressed by the Id. DR for the Revenue, the sole question arises for determination in this case is:-

"as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income during assessment proceedings?"

8. Undisputedly, by filing the return of income, assessee has claimed certain expenses which have been found to be not allowable and consequently, AO by disallowing the same made addition thereof. It is also not in dispute that it is not the case of the Revenue that certain particulars necessary for the assessment proceedings have been concealed or assessee has furnished inaccurate

particulars of income.

9. In order to proceed further, we would like to peruse the notice dated 27.10.2020 issued by AO u/s 274 read with section 271(1)(c) of the Act to initiate the penalty proceedings which is extracted as under for ready perusal:-

"NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961.

PAN AACCI7147R Dated: 20.03.2015 To M/s. Ishita Technologies Ltd., Western Side Basement & Ground Floor, 4378/4, Gali-4B, Ansari Road, Darya Ganj, New Delhi-02.

Whereas in the course of proceedings before me for the assessment year 2012-13 it appears to me that you:-

- Have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961 dated.....
- Have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2,3,4 and 5.

You are requested to appear before me at 11.30 AM/PM on 24.04.2015 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961.

If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representatives you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.

Sd/-

Place : New Delhi
Date : 20.03.2015
Tax,

Assessing Officer,
(Amit Kumar Jain)
Dy. Commissioner of Income

Circle 12(20, New Delhi."

10. Bare perusal of the notice issued u/s 274 read with section 271(1)(c) of the Act, extracted above, in order to initiate the penalty proceedings against the assessee goes to prove that the AO himself was not aware / sure as to whether he is issuing notice to initiate the penalty proceedings either for "concealment of particulars of income" or "furnishing of inaccurate particulars of such income"

by the assessee rather issued vague and ambiguous notice by incorporating both the limbs of section 271(1)(c). When the charge is to be framed against any person so as

to move the penal provisions against him/her, he/she is required to be specifically made aware of the charges to be leveled against him/her.

11. Bare perusal of notice issued u/s 274 read with section 271(1)(c) shows that the AO has failed to specify in the show-cause notice (supra) if the assessee has concealed the particulars of income or has furnished inaccurate particulars of income. Issuance of valid notice in order to initiate the penal provisions as sine qua non for levying the penalty as this issue has been decided by the Hon'ble Karnataka High Court in the case of CIT vs. SSA's Emerald Meadows - 73 taxmann.com 241 (Kar.) and Hon'ble Delhi High Court in case of Pr. CIT vs. Sahara India Life Insurance Company Ltd. in ITA 475/2019 order dated 02.08.2019.

12. 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 1TR 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]"

13. Hon'ble Delhi High Court in case of Pr. CIT vs. Sahara India Life Insurance Company Ltd. in ITA 475/2019 order dated 02.08.2019 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."

14. We have further gathered that when the assessee has disclosed all the particulars in the return of income claiming certain expenses, however found to be not allowable, it would not amount to furnishing of inaccurate particulars of income to attract the penal provisions u/s 271(1)(c) of the Act, as has been held by Hon'ble Apex Court in the case of Reliance Petro Products Pvt. Ltd. - 322 ITR 158 (SC), operative part of which is extracted for ready perusal as under :-

"A glance at the provisions of section 271(1)(c) of the I.T. Act, 1961 suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271(1)(c) would embrace the detail of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.

Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars."

15. In view of what has been discussed in the preceding paras, the contention raised by the ld. DR for the Revenue by relying upon the case laws cited as Sundaram Finance Ltd. vs. CIT, CIT vs. Smt. Kaushalya, Trimuti Engineering Works vs. ITO (supra) and others referred to in para no.6 of this order, are of no support to the Revenue in view of the law laid down by Hon'ble jurisdictional High Court in case of Pr. CIT vs. Sahara India Life Insurance Company Ltd. (supra) and the issue decided by Hon'ble Supreme Court in case of CIT vs. SSA's Emerald Meadows (supra).

16. So, we are of the considered view that decision rendered by Hon'ble Apex Court in CIT vs. SSA's Emerald Meadows (supra) and Hon'ble Karnataka High Court in CIT vs. Manjunatha Cotton and Ginning Factory (supra) are squarely applicable to the facts and circumstances of the case as the AO has miserably failed to specify in the notice issued under section 274 read with 271(1)(c) of the Act, "as to whether the assessee has concealed the particulars of his income or has furnished inaccurate particulars of such income", and also merely making a claim which is not sustainable in law by itself, as in the present case, assessee's expenditure has been disallowed by the AO, would not amount to furnishing of inaccurate particulars of income. Consequently, penalty levied by the AO and

confirmed by the ld. CIT (A) is not sustainable in the eyes of law. Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 1st day of September, 2021 after the conclusion of the hearing through video conference.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Dated the 1st day of September, 2021.
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-18, Gurgaon.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.