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

+ ITA 258/2024

PRINCIPAL COMMISSIONER OF INCOME TAX 1

..... Appellant

Through: Mr. Prashant Meharchandani,
SSC with Mr. Akashat Singh,
Ms. Ritika Vohra, Mr. Utkarsh
Kandpal, Advs.

versus

**M/S CELLCAST INTERACTIVE INDIA PRIVATE
LIMITED**

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

ORDER

06.05.2024

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CM APPL. 26594/2024 & 26595/2024

Bearing in mind the disclosures made, the delay in filing and re-filing the appeal is condoned.

The application shall stand disposed of.

ITA 258/2024

1. This appeal is directed against the order of the Income Tax Appellate Tribunal [“**ITAT**”] dated 13 January 2023 and in terms of which the matter has been remanded to the Assessing Officer to re-examine the question of Section 271(1)(c) of the Income Tax Act, 1961 [“**Act**”].

2. What appears to have weighed upon the ITAT was a failure on the part of the appellant to indicate in the original notice the particular limb of Section 271(1)(c) which was sought to be invoked. We note



that the imperatives of such a procedure being adhered to and being ex facie evident from a reading of the show cause notice itself was one which was emphasised by this Court in **Principal Commissioner of Income-Tax Delhi vs. Blackroak Securities Pvt. Ltd.** [2023 SCC OnLine Del 7918].

3. While dealing with the aforesaid aspect, the Court had held as follows:-

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

8. 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]

9. 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 v. Minu Bakshi*, 2022 : DHC : 2814-DB.

(ii) *Pr. CIT v. Unitech Reliable Projects Pvt. Ltd.* 2023 : DHC : 4258-DB.

(iii) *Pr. CIT v. Gopal Kumar Goyal*, (2023) 153 taxmann.com 534 (Del).

(iv) *Pr. Commissioner of Income Tax-1 v. Ansal Properties and Infrastructure*, 2023 : DHC : 5443-DB.



(v) *Pr. Commissioner of Income Tax (Central)-2 v. Bhudeva Estate Pvt. Ltd.*, 2023 : DHC : 5689-DB.

(vi) *Commissioner of Income Tax (Exemptions) Delhi v. Jamnalal Bajaj Foundation*, 2023 : DHC : 5691-DB.

(vii) *Pr. Commissioner of Income Tax Delhi (Central)-3 v. Shyam Sunder Jindal*, 2023 : DHC : 6138-DB.

(viii) *Pr. Commissioner of Income Tax-6 v. Modi Rubber Ltd.*, 2023 : DHC : 7856-DB.

10. 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 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 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 inspite 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 v. 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 judgment of this Court in *PCIT v. 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 Shakdher, J.] was a party has reached the same conclusion in *PCIT v. Minu Bakshi* 222 (7) TMI 1370.

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]

11. 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.

12. 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.

13. 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.”

4. In view of the above, we find no justification to entertain the instant appeal. The appeal consequently fails and shall stand dismissed.

5. Pending application also stands disposed of.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 06, 2024/neha