



2025:DHC:3213-DB



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

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*Date of Decision: 24.04.2025*

+ **ITA 87/2025**

THE PR. COMMISSIONER OF INCOME TAX -7 .....Appellant

Through: Mr Ruchir Bhatia and Mr Anant Mann, Advocates.

Versus

QUIPPO TELECOM INFRASTRUCTURE  
PVT. LTD.

.....Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**HON'BLE MR. JUSTICE TEJAS KARIA**

**VIBHU BAKHRU, J.**

**CM APPL. 21301/2025**

1. For the reasons stated in the application, the delay in re-filing of appeal is condoned.
2. The application stands disposed of.

**ITA 87/2025**

3. The appellant [**Revenue**] has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**Act**] impugning an order dated 06.03.2020 [**impugned order**] passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No.2191/Del/2017 in respect of Assessment Year [**AY**] 2010-11 whereby the said appeal was allowed.



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4. The impugned order is a common order passed in two connected appeals [being ITA No.2191/Del/2017 and ITA No.2006/Del/2017] preferred by the respondent [Assessee]. Whilst, the Assessee's appeal [being ITA No.2191/Del/2017] assailed the order dated 25.01.2017 passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)]-7, New Delhi dismissing the Assessee's appeal against the disallowance and additions made by the Assessing Officer [AO]; ITA No.2191/Del/2017 assailed the order dated 25.01.2017 passed by CIT(A) confirming the penalty of ₹1,25,00,00,000/- levied under Section 271(1)(c) of the Act.

5. Whereas learned ITAT dismissed the Assessee's appeal [ITA No.2006/Del/2017] on quantum, it allowed the Assessee's appeal [ITA No.2191/Del/2017] in respect of the levy of penalty.

6. The Revenue's present appeal is in respect of the impugned order to the extent it allows the Assessee's penalty appeal [being ITA No.2006/Del/2017].

7. The Assessee had filed its return of income for AY 2010-11 on 08.10.2010 declaring a loss of ₹2,25,86,53,796/- under the normal provisions and a book loss of ₹2,25,28,18,809/- under Section 115JB of the Act. The Assessee's return was picked up for scrutiny and the said proceedings culminated in the assessment order dated 15.03.2013 passed under Section 143(3) of the Act.

8. The AO disallowed the Assessee's claim for expenditure of



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₹2,50,00,000/- for availing professional services and further disallowed a sum of ₹223,03,31,321/- on account of interest claimed by the Assessee under Section 36(1)(iii) of the Act and assessed the total income of the Assessee at ₹20,54,110/-. Additionally, the AO also directed “issuance of notice under Section 271(1)(c) of the Act”.

9. Thereafter, notice dated 15.03.2013 under Section 274 read with Section 271(1)(c) of the Act was issued to the Assessee. However, the said notice did not disclose whether the penalty proceedings initiated against the Assessee were in respect of furnishing inaccurate particulars or for concealment of income.

10. The Assessee responded to the notice initiating penalty proceedings by filing a reply dated 15.04.2013. The Assessee contended that it had incurred the expenditure as disclosed and the question whether the same were allowable was a debatable issue.

11. The AO found that no business activity was carried out by the Assessee and therefore disallowed the expenditure booked by the Assessee. The additions made by the AO were founded on the failure on the part of the Assessee to establish that it had incurred expenses in carrying on its business activities.

12. The AO determined that the tax evaded was to the extent of ₹76,65,87,116/- and determined the penalty amount within the band of 100% to 300% of the said amount.



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13. The Assessee appealed the assessment order as well as the order imposing penalty before the CIT(A). The CIT(A) dismissed the appeals filed by the Assessee. Aggrieved by the orders passed by the CIT(A), the Assessee filed appeals, as noted above, before the learned ITAT.

14. Whilst the quantum appeal was dismissed, the learned ITAT allowed the Assessee's appeal in respect of an order dated 25.01.2017 passed by the CIT(A) confirming the penalty imposed on the Assessee.

15. The learned ITAT noted that the penalty under Section 271(1)(c) of the Act could be imposed on two limbs. First, for furnishing incorrect particulars; and second, for concealment of income. However, the notice issued to the Assessee did not specify the limb under which the penalty was proposed to be levied. The learned ITAT referred to the order dated 02.08.2019 of this court in *Pr. Commissioner of Income Tax v. M/s Sahara India Life Insurance Company Ltd.* whereby this court had faulted the issuance of such a notice for initiating penalty proceedings on the ground that notice did not specify under which limb of Section 271(1)(c) of the Act, the penalty proceedings were initiated. This court concurred with the similar view of the Karnataka High Court in *CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar)*.

16. More importantly, the learned ITAT also held on merits in favour of the Assessee that the issue involved in the present case was a debatable one therefore levy of penalty was not warranted. The relevant extract of the impugned order is set out below:



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24. We have carefully considered the rival contention and perused the orders of the lower authorities. One of the issues involved in this appeal is whether the AO without striking out- one of the limb i.e. furnishing of inaccurate particulars of income or concealment of income can levy penalty under section 271 (1) (c) of the act. The honourable Delhi High Court in ITA number 475/2019 along with other appeals in case, of Sahara India life insurance Co Ltd in order dated 2 August 2019 has considered the identical issue 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 85 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 Supreme Court of India in SLP No.11485 of 2016 by order dated 5<sup>th</sup> August, 2016.

22. On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises.”

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26. Even otherwise, the claim of the assessee is that assessee is carrying on business of sale and purchase of securities. Such claim assessee tried to substantiate with the annual audited accounts of the assessee. It also supported the same with the other objects



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mentioned in the memorandum of Association along with share purchase agreements and the relevant scheme of demerger. On careful perusal of the assessment order for assessment year 2011-12 where the assessee has shown the sale of shares and resultant gain or loss from under the head business income, the learned assessing officer has not disturbed it but has disallowed the loss booked on sale of such shares holding that it is much below the market price and transaction is not executed at 'arm's length. Therefore, it is apparent that the claim of the assessee though ultimately not accepted by the concurrent authorities but it cannot be denied that issue raised is not debatable. Further, when the issue itself is debatable, it cannot result into penalty. Based on our discussion also in the quantum appellate proceedings before us covered in this order, it cannot be denied that claim of the assessee is not debatable.

27. Further, the assessee has furnished all the particulars related to its claim. None of the evidences filed by the assessee was incorrect. It may be an altogether different thing that in spite of those evidences, the issue is decided against the assessee. However, merely because the issue is decided against the assessee confirming the disallowance it cannot result into levy of penalty for furnishing of inaccurate' particulars. The assessee also get support from the decision of the honourable Delhi High Court in 63 DTR 87 wherein, it has been held that where assessee has submitted the full details with respect to the claim of the assessee and further in subsequent year the loss has lapsed coupled with the fact that the explanation given by the assessee was not held to be not bona fide, the penalty cannot be sustained. Therefore, even on the merits, the orders of the lower authorities with respect to the penalty levied on the assessee under section 271 (1)(C) of the act cannot be sustained.”

17. Mr. Ruchir Bhatia, learned counsel appearing for the Revenue did not controvert that the notice issued to the Assessee did not specify under which limb of Section 271(1)(c) of the Act, the penalty was proposed to be levied. Concededly, the question whether penalty proceedings initiated pursuant to



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such a notice is sustainable is squarely covered against the Revenue by several decisions of this court. We consider it apposite to refer to the decision in ***Principal Commissioner of Income-tax v. Unitech Reliable Projects (P) Ltd.:[2023] 153 taxmann.com 495 (Del)***, whereby Coordinate Bench of this court had observed as under:

“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 vs. SSA’s Emerald Meadows*** (2016) 73 taxmann.com 248 (SC) observed that the penalty proceedings would have to be 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 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*



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*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*



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*accordingly dismissed.”*

[Emphasis added]

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.).”

18. Undisputedly, the questions involved in the present appeal are covered by the earlier decisions of this Court. Accordingly, no substantial question of law arises for consideration of this court.

19. The appeal is, accordingly, dismissed.

**VIBHU BAKHRU, J**

**TEJAS KARIA, J**

**APRIL 24, 2025**

‘gsr’

[Click here to check corrigendum, if any](#)