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

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*Decision delivered on: 06.10.2023*

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**ITA 258/2019**

PR. COMMISSIONER OF INCOME TAX – 6 ..... Appellant

Through: Mr Aseem Chawla, Sr Standing Counsel with Mr Viplav Acharya, Standing Counsel along with Ms Pratishtha Chaudhary and Mr Aditya Gupta, Advs.

Versus

M/S MODI RUBBER LTD. .... Respondent

Through: Mr Rohit Jain, Mr Aniket D. Agrawal and Mr Samarth Chaudhari, 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) 2003-04.
2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 14.06.2018 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].
3. The questions of law proposed in the instant appeal are the following:
  - (i) *Whether on the facts and circumstances of the case the Ld. ITAT was justified in law in deleting the penalty u/s 271(1)(c) of the Income Tax Act, 1961 amounting to Rs.12,90,00,000/- by relying upon the decision of the Hon'ble Apex Court in the case of*



*SSA Emerald Meadows (2016) 73 taxmann.com 248(SC) ignoring the fact that the AO has clearly recorded his satisfaction regarding furnishing of inaccurate particulars of the income in the assessment order?*

*(ii) Whether on the facts and circumstances of the case the Ld. ITAT was justified in law in deleting the penalty u/s 271(1)(c) of the Income Tax Act, 1961, amounting to Rs. 12,90,00,000/- by holding that there was no application of mind in issue of notice proposing levy of penalty due to non-ticking of the relevant clause of 'concealment of income' or 'furnishing of inaccurate particulars of income'; ignoring that such action cannot invalidate the notice when the Bombay High Court in **CIT v. Smt. Kaushalya** has held that mere non striking off specific limb cannot by itself invalidate notice issued under S. 274 of the Act as the language of the Section does not speak about the issuance of notice.*

*(iii) Whether the ITAT has failed to consider that it is the revenue's case that the assessee has failed to furnish true particulars of its income and therefore the levy of penalty was proper in this case?*

4. Therefore, in a nutshell, the question which arises for consideration in the instant matter is, whether failure on the part of the Assessing Officer (AO) to put to the respondent/assessee a specific charge is fatal to the penalty proceedings, having regard to the provision of Section 271(1)(c) of the Income Tax Act, 1961 [in short, "Act"].

4.1 The said provision, i.e., Section 271(1)(c) of the Act, permits the AO to levy penalty, either for concealment of particulars of income or where the



assessee furnishes inaccurate particulars of income. There is a third possibility, that is perhaps, the available to the AO to impose penalty on both counts if such facts in a given matter. However, we find upon perusal of the assessment order, the following has been stated by the AO, with regard to initiation of penalty:

*“.... I am satisfied that this is a fit case for imposition of penalty u/s 271(1)(c) for failure on the part of the assessee to disclose true particulars of its income on all the issues on which additions/disallowances have been made as discussed in the order. Thus penalty proceedings u/s 271(1)(c) are initiated by issuing penalty show cause notice.”*

5. It is not in dispute that thereafter a notice under Section 274 of the Act was issued, to which reference is made in the order of the Tribunal. The relevant part of the notice reads as follows:

*“Whereas in the course of proceedings before me for the assessment year 2003-2004 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 hereby requested to appear before me at 11.00 A.M./P.M. on 28.01.2011 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 representative 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(1)(c).”*

*[Emphasis by us]*

6. A perusal of the notice would show, something which the Tribunal has also recorded, that the AO did not indicate to the respondent/assessee as to whether this was a case of concealment of particulars or furnishing inaccurate particulars or even, as indicated above, the case where both charges were sought to be levelled against the respondent/assessee.



7. The penalty order, as a matter of fact, injects greater confusion in this behalf. This is evident from a perusal of the following parts of the penalty order:

***“ ... From the facts of the case, it is apparent that the assessee has furnished inaccurate particulars of its income in respect of disallowance of various additions made by the AO.***

*I therefore, hold that the assessee has deliberately furnished inaccurate particulars of income. This defaults liable for penalty u/s 271(l)(c) of the IT Act, 1961 to be imposed. Accordingly, I impose a penalty of Rs. 12,90,00,000/- as per the following calculation.*

***Amount of which the assessee has furnished  
Inaccurate particulars of income  
or concealed income***

*Rs.35,00,97,219/-*

*Minimum Penalty imposable@  
100% of tax sought to be evaded  
on such income*

*Rs.12,86,60,728/-*

*Maximum Penalty imposable@  
300% of tax sought to be evaded on  
such income*

*Rs.38,59,82,184/-*

*I imposed penalty of Rs.12,90,00,000/-“*

*[Emphasis by us]*

8. There is obviously an internal inconsistency in the penalty order. The AO begins by saying that the respondent/assessee had furnished inaccurate particulars of his income in respect of disallowance of various additions made by the AO and, then, while computing the penalty that he imposed on the respondent/assessee, he goes on to say that the respondent/assessee had furnished “inaccurate particulars of income or concealed income”.

9. There was obviously no clarity in the mind of the AO as to which limb of Section 271(1)(c) of the Act got attracted in the instant case for initiation, followed by imposition of penalty.

10. This issue is covered by several judgments of this court, the details of



which are given hereafter:

- (i) ***Pr. Commissioner of Income Tax-3 v. Ms. Minu Bakshi***, 2022:DHC:2814-DB.
- (ii) ***Pr. Commissioner of Income Tax v. Unitech Reliable Projects Pvt. Ltd.***, 2023:DHC:4258:DB.
- (iii) ***Pr. Commissioner of Income Tax (Central) - 2 v. Gopal Kumar Goyal***, 2023:DHC:4845-DB.
- (iv) ***Pr. Commissioner of Income Tax-1 v. Ansal Properties and Infrastructure Ltd.***, 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)-1 v. Shyam Sunder Jindal***, 2023:DHC:6138-DB.

11. We may note that insofar as the judgment rendered by this court in ***Unitech Reliable Projects Pvt. Ltd.*** is concerned, the following observations, according to us, merit reproduction:

“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.



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.”*

12. This aspect was reiterated in the judgment rendered by this court in ***Shyam Sunder Jindal***.

13. It may be relevant to indicate that in the course of arguments, Mr Aseem Chawla, learned senior standing counsel, who appears on behalf of the appellant/revenue, has also sought to raise the issue concerning limitation.

13.1 In this regard, Mr Chawla has drawn our attention to Section 275(1)(a) of the Act. Although, Mr Chawla, using his persuasive skills, sought to draw us into this issue as well, we are not inclined to entertain the appeal on this issue, as no question of law has been proposed by the appellant/revenue in the instant appeal with regard to the said provision.

14. Thus, for the foregoing reasons, we find that there is no substantial question of law which arises for our consideration.

15. The appeal is, accordingly, closed.



2023:DHC:7856-DB



16. Parties will act based on the digitally signed copy of the judgment.

**RAJIV SHAKDHER, J**

**GIRISH KATHPALIA, J**

**OCTOBER 6, 2023/aj**