

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1636/Del./2022  
(ASSESSMENT YEAR : 2009-10)**

M.A. Projects Private Limited,  
BA-17A, DDA Flats,  
Ashok Vihar Phase I,  
New Delhi – 110 052.

vs. ACIT, Central Circle 13,  
New Delhi.

**(PAN : AAECM2372E)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Suresh Gupta, CA  
REVENUE BY : Ms. Sarita Kumari, CIT DR

Date of Hearing : 22.03.2023  
Date of Order : 12.04.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of Id. CIT (Appeals)-26, New Delhi dated 01.07.2022 pertaining to the Assessment Year 2009-10.

2. The grounds of appeal taken by the assessee read as under :-

“1. The Ld. CIT(A) has erred both on facts and in law in upholding the impugned imposition of penalty of Rs.90,52,387/- u/s 271(1)(c) of IT Act on the basis of the show cause notice dated 29.12.2011 for concealed/furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5 without specifying the precise default in the notice and therefore the printed notice without striking off the inapplicable

issued for levy of penalty was vague, non-communicative and thus non-speaking defeating the purpose of notice.

2. The Ld. CTT(A) has erred both in law and in facts in upholding the impugned penalty order passed by Ld. AO is arbitrarily, unjustly and without basis in levying penalty of Rs.90,52,387/- u/s 271 (1)(c) of the IT Act.

3. The Ld. CIT(A) has erred on the facts and circumstances of the case in confirming the imposition of penalty of Rs.90,52,387/- u/s 271(1)(c) of IT Act ignoring the fact that the impugned penalty order under appeal is not tenable under law as the additions in the quantum proceedings did not establish the default attributed to the appellant for which penalty is leviable u/s 271(1)(c) on the ground that the additions are based on the issues which are debatable on the ground that the contention of the appellant was accepted by the first appellate authority.

4. The Ld. CIT(A) has erred on the facts and circumstances of the case in confirming the imposition of penalty of Rs.90,52,387/- u/s 271 (1)(c) of IT Act disregarding the fact that the additions on which the penalty is levied are not tenable under law and no penalty u/s 271(1)(c) can be levied on the additions which are legally unassailable.

5. The Ld. CIT(A) has erred on the facts and circumstances of the case in confirming the imposition of penalty on addition of Rs.1,32,500/- ignoring the fact that no satisfaction was recorded in the assessment order for initiating the penalty proceedings on addition of Rs.1,32,500/-. Therefore, the penalty proceedings qua this addition is not sustainable in law as there was no valid initiation of penalty proceedings for this addition.”

3. In this case, penalty under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') was levied upon the assessee on account of additions for unexplained cash credit and commission @ 5%. The total penalty levied was Rs.90,52,387/-.

4. Upon assessee's appeal, ld. CIT (A) confirmed the same.

5. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel of the assessee has raised a legal issue that the penalty notice was an omnibus notice without specifying the charge and it was prayed that since the notice is not specifying the charge, penalty levied is liable to be quashed.

7. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below and submitted that the aforesaid issue was also raised before the ld. CIT (A) but he has rejected the same.

8. Upon careful consideration and going through the notice submitted by the assessee at page no.1 of paper book, we note that the notice is an omnibus notice without specifying the specific charge upon the assessee and in such circumstances, Higher Courts have held that penalty levied is not sustainable. In this regard, we refer to Hon'ble Bombay High Court (Full Bench at Goa) in the case of Mr. Mohd. Farhan A. Shaikh v. ACIT in Tax Appeal No. 51 and 57 of 2012 dated 11.03.2021 wherein it has been held that no specification of charge in the penalty notice leads to same becoming void and penalty on that count is to be deleted. Hon'ble Court held as under :-

“Head Note only :

S.271(1)(c) : Penalty – Concealment –Non-striking off of the irrelevant part while issuing notice under section 271(1)(c) of the Income-tax Act, - Order is bad in law – Assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.”

9. Hon'ble jurisdictional High Court in ITA 475/2019 & Ors. Vide order dated 02.08.2019 has also taken the same view. Hon'ble jurisdictional High Court concluded 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. 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.”

10. Respectfully following the precedent as above, we note that due to defect in the penalty notice, penalty is not sustainable, hence the same is quashed. Since we have quashed the penalty on defective notice, merits are not being discussed as they are only academic in interest.

11. In the result, this appeal filed by the assessee is allowed.

**Order pronounced in the open court on this 12<sup>th</sup> day of April, 2023.**

**Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 12<sup>th</sup> day of April, 2023  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-26, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.

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