

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C" NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.6282/Del/2019  
निर्धारणवर्ष/Assessment Year:2015-16**

<b>Green Tourist Services P. Ltd. C/o Raj Kumar &amp; Associates CA L-7A (LGF), South Extn., Part III, Delhi.</b>	<b>बनाम Vs.</b>	<b>ACIT Circle 10(2) New Delhi.</b>
<b>PAN No. AAACG2348C</b>		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

<b>निर्धारितीकीओरसे /Assessee by</b>	<b>Sh. Raj Kumar Gupta, CA Sh. Sumit Goyal, CA</b>
<b>राजस्वकीओरसे /Revenue by</b>	<b>Ms. Parul Singh, Sr. DR</b>

<b>सुनवाईकीतारीख/ Date of hearing:</b>	<b>17.11.2020</b>
<b>उद्घोषणाकीतारीख/Pronouncement on</b>	<b>18.11.2020</b>

**आदेश /O R D E R**

**PER BHAVNESH SAINI, J.M.**

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-4, New Delhi dated 21/05/2019 for A.Y. 2015-16, challenging the levy of penalty u/s 271(1)(c) of the Income Tax Act, 1961.

2. Briefly the facts of the case are that the return of income declaring loss of Rs. 76,67,319/- was filed. The AO completed the assessment u/s 143(3) vide order dated 12.12.2017 at loss of Rs. 46,03,595/-. The AO while finalizing the assessment initiating the penalty proceedings on three additions i.e. disallowance of interest u/s 36(1)(iii) Rs. 9,39,163/-, addition in respect of short term capital gain Rs. 13,37,998/- and disallowance of brokerage on sale of flat Rs. 1,57,790/-.

The AO vide separate order levied the penalty u/s 271(1)(c) of the Act which is confirmed by the Ld. CIT(A).

3. We have heard Ld. Representatives of both the parties through video conferencing and perused the material on record.

4. Ld. Counsel for assessee referred to the notice u/s 274 read with 271 of the Act dated 12.12.2017 which was issued before levy of the penalty in which AO has mentioned “have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2, 3, 4 and 5.” Ld. Counsel for assessee therefore submitted that since notices bad in law as it did not specify in which limb of section 271(1)(c) of the Act penalty has been initiated, therefore, issue is covered by judgment of Delhi High Court in the case of M/s Sahara India Life Insurance Company Limited dated 2<sup>nd</sup> August, 2019. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. We have considered the rival submissions. We have seen the contents of the show-cause notice dated 12.12.2017 reproduced above in which AO has not specifically mentioned as to for which limb of section 271(1)(c) of the Act penalty has been initiated i.e. whether for concealment of particulars of income or inaccurate particulars of income. The notice is, therefore, 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. In the case of CIT Vs. M/s SSA's Emerald Meadows 73 taxman.com 241, Hon'ble Karnataka High Court in the same circumstances confirm the order of the Tribunal, whereby penalty was cancelled. Departmental appeal was dismissed. The judgment of the High Court is confirmed by the Supreme Court by dismissing the SLP of the Revenue Department reported in 73 taxman.com 248. Hon'ble Delhi High Court in the case of Pr. CIT Vs. M/s

Sahara India Life Insurance Company Limited (2019) (8TMI 409) following the above judgment dismissed the Departmental appeal.

6. In view of the above, we are of the view since show cause notice issued before levy of penalty is bad in law and, as such, it would vitiate the entire penalty proceedings. Thus, no penalty could be levied against the assessee. In view of the above, we set aside the orders of the authorities below and cancel the penalty.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court.

Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Dated: 18<sup>th</sup> November, 2020  
*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi