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

\+ ITA 210/2023

PR. COMMISSIONER OF INCOME TAX -CENTRAL -1
.....Appellant

Through: Mr. Aseem Chawla, Senior SC with Ms. Monica Benjamin, Junior SC, Ms. Priya Sarkar, Jr. SC & Ms. Pratistha, Advocate.

versus

CHETAN GUPTA .....Respondent

Through: Ms. Kavita Jha, Senior Advocate with Mr. Aditeya Bali & Mr. Akash Shukla, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% **14.10.2024**

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*), impugning an order dated 07.09.2021, passed by the learned Income Tax Appellate Tribunal (hereafter *the learned ITAT*) in ITA No. 4898/DEL/2017 and ITA No. 4899/DEL/2017, in respect of assessment years (hereafter *AY*) 2005-06 and 2007-08. The present appeal is confined to the learned ITAT's decision in ITA No. 4898/DEL/2017, in respect of AY 2005-06.

2. The Revenue has called into question the decision of the learned ITAT in setting aside the order of penalty imposed on the assessee on the ground that the show cause notice issued under Section 271(1)(c) read with

Section 274 of the Act did not contain any specific charges. Section 271(1)(c) of the Act provides for a levy of penalty in a case where the assessee is found to have concealed income or furnished inaccurate particulars of income. Admittedly, there are two separate limbs for imposing penalty – one for concealment of income and second, for furnishing inaccurate particulars of income. The learned ITAT found that since the show cause notice dated 16.02.2017, issued by the Assessing Officer, did not clearly specify the charge whereby the assessee was called upon to respond to the same, the penalty levied could not be sustained.

3. The learned Senior Counsel appearing for the assessee has produced a copy of the show cause notice dated 16.02.2017, before this Court today, which is set out below:

> "To
> Sh. Chetan Gupta,
> 118, Ansal Bhawan, 16, K.G. Marg,
> New Delhi
>
> Sir,
>
> **<u>Sub: Show Cause notice u/s 271(1)(c)for the A.Y. 2005-06 - reg.</u>**
>
> Please refer to the above, you are hereby given an opportunity to show cause as to why penalty u/s 271(1)(c) should not be levied under the fact and circumstance of the case. The compliance may please be made in person or through representative on or before **<u>23-02-2017</u> at <u>02:30 P.M</u>**. in Room No. 330. ARA Centre, Jhandewalan: Extension, New Delhi-110055, failing which it will be presumed that you have nothing to say in the matter and penalty will be decided on merits.
>
> (Nawab Singh)
> Asstt. Commissioner of Income Tax
> Central Circle-7, New Delhi."

4. As apparent from the above, the show cause notice issued to the assessee did not specify the charge, on the basis of which the penalty was proposed to be levied. The controversy in the present appeal is squarely covered by various decisions of this Court, including ***Principal of Commissioner of Income-Tax v. Modi Rubber Ltd.:*** *2023 157 Taxmann.com 588 (Delhi)*. The learned ITAT has also referred to the decision of the Supreme Court in ***CIT v. SSA's Emerald Meadows***: *(2016) 73 Taxman.com 248 (SC)* and Karnataka High Court in ***CIT v. Manjunatha Cotton & Ginning Factory***: *(2013) 359 ITR 565 (Kar)*.

5. In view of the above, no substantial question of law arises in the present appeal.

6. The present appeal is accordingly dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 14, 2024/*at*

Click here to check corrigendum, if any