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

\+ ITA 170/2024 & CM APPL 14766/2024

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

Through: Mr. Ruchir Bhatia, Sr. SC alongwith Ms. Deeksha Gupta, Advocate

Versus

UNITECH REALITY PVT. LTD. ..... Respondent

Through: Mr. Sachit Jolly, Ms. Soumya Singh, Ms. Disha Jham, Mr. Devansh Jain, Mr. Aditya Rathore and Mr. Abhyudaya Shankar Bajpai, Advocates

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **05.04.2024**

1. The appellant has assailed the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 19 July 2023 which had deleted the penalty levied on the respondent-assessee under Section 271(1)(c) of the Income Tax Act, 1961 [**"Act"**].

2. We note that while dealing with the aforesaid question, the ITAT has observed as follows:-

> "9. However in the case in hand the plea was raised before the Ld. C1T(A) at first opportunity and he ought to have followed the binding precedent of Hon'ble Supreme Court in CIT vs. SSA's Emerald Meadows, (supra) where the Hon'ble Apex Court looked into the facts before them that Tribunal relying on the decision of the Division Bench of the Hon'ble Karnataka High Court in the case

of **'CIT and Another vs. Manjunatn Cotton & Ginning Factory' [2013] 359 ITR 565 (Karn.),** allowed the appeal of the assessee, holding that notice issued by the Assessing Officer under section 274 read with section 271(l)(c) of the Act was bad in law, as it did not specify under which limb of section 271(1)(c) of the Act, penalty proceedings has been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. When the matter travelled upto the High Court, it supported the judgment of the, Hon'ble Karnataka High Court in the case of **'CIT and Another vs. Manjunath Cotton & Ginning Factory' (supra)** and decided that there was. therefore, no substantial question of law to be decided. Thereafter, an SLP was filed before the Hon'ble Apex Court and die Apex Court dismissed the SLP of the Revenue finding no merit therein and confirming the issue in favour of the assessee.

9.1 In 'CIT and Another vs. Manjnnath Cotton & Ginning Factory', [2013] 359 ITR 565 (Karn.), it has been held by the Hon'ble High Court that notice under section 274 read with section 271(l)(c) of the Act should specifically state the grounds mentioned in section 271(l)(c) of the Act, i.e., it is for concealment of income or for furnishing of inaccurate particulars of income. Sending printed form, where all the grounds mentioned would not satisfy the requirement of law. The assessee should' know the grounds which he has to meet otherwise, the principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee. Penalty proceedings are distinct from assessment proceedings, though it emanates from the assessment proceedings; still it is separate and independent proceedings all together.

9.2 In **'Meherjee Cassinath Holdings Pvt. Ltd vs. ACIT (ITAT Mumbai)', ITA No. 2555/MUM/2012, order dated 28/04/2017**, the observation of the Bench was that penalty proceedings under section 271(l)(c) of the Act are "quasi-criminal" proceedings and ought to comply with the principles of natural justice. The non striking of the irrelevant portion in the show-cause notice means that the Assessing Officer is not firm about the charge against the assessee and the assessee is not made aware as to which of the two limbs of section 27 l(l)(c) he has to respond.

9.3 Hon'ble Delhi High Court in case of Pr. CIT vs. Sahara India Life Insurance Company Ltd. (ITA No.475/2019 order dated 20.08.2019 while deciding the identical issue held 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."

9.4 Thus to conclude, following the decisions rendered in the cases of CIT vs. Manjunatha Cotton and Ginning Factory, (Supra), CIT vs. SSA's Emerald Meadows and Pr. CIT vs. Sahara India Life Insurance Company Ltd. (supra), the Co-ordinate Benches of the Tribunal are taking the consistent view that when the notice issued by the AO is bad in law being vague and ambiguous having not specified under which limb of section 271(1)(c) of the Act the penalty notice has been issued, the penalty proceedings initiated u/s 271 (l)(c) are not sustainable."

3. In order to examine the issue that arises in further detail and on the last occasion, we had called upon Mr. Bhatia, learned counsel for the appellant, to place for our perusal a copy of the Show Cause Notice which had been issued by the Assessing Officer [**"AO"**] and suggested the imposition of penalty under Section 271(1)(c) of the Act.

4. Mr. Bhatia has handed over a copy of the Notice dated 22 December 2017 for our perusal and which reads as follows:-

"Original return of income was electronically filed on 28.09.2015 vide E-filing Acknowledgement number 825457471280915 declaring a loss of Rs.l7,87,88, 640/- which was processed u/s 143(1). The case was selected for scrutiny and a notice u/s 143(2) dated 27.06.2016 was issued and duly served upon the assessee. On behalf of the assessee, A/R attended the assessment proceedings from time to time and filed submission and necessary details as requisitioned, which are placed on record. The case was discussed with the authorized representative.

2. During the year, the assessee was engaged in the business of real estate activities.

3.During the course of assessment proceedings assessee has made a submission dated 18.12/2017. The same is reproduced as under:

The Assistant Commissioner of Income Tax.
Circle 27(1) Room No 199,
C.R. Building,
New Delhi

Dear Sir,

Re: Unitech Realtv Private Limited
Sub: Assessment Proceedings for the Asstt Year 2015-16 (AAACR4290E)

This is with reference to above mentioned assessment proceedings for the AY 2015-16, we would like to request your good self that the assessee company has filed its Return of Income ('ROI") by claiming business loss amounting to Rs.17,87,88,640/-, however inspite of the above irrefutable position the assessee in good faith and, to avoid undue litigation, harassment and, to buy peace of mind is willing to get assessee at NIL income instead of declared loss of Rs.17,87,88,640/- subject to the condition that no penalty/prosecution proceedings would be initiated against the assessee company under any other provisions of the Act including penalty proceedings u/s 271(1)(c) of the Act.

Kindly place the above submission on record and accede to our request.

Thanking you

With regards,
For Unitech Realty Private Limited

The **A.R** of the assessee company to buy peace of mind, to avoid undue litigation and harassment, vide his above stated letter, offered that the loss' of the company may be reduced and assessed at NIL. After considering all the facts and circumstances of the case and after the perusal of the above submission filed by the A.R., the income of the assessee company is assessed at NIL. Penalty proceedings u/s 271(l)(c) is being initiated separately for concealment of income."

5. As is ex facie evident from a reading of the aforesaid, the AO has failed to specify under which limb of Section 271(1)(c) of the Act were the penalty proceedings sought to be sustained. The notice fails

to indicate whether penalty was sought to be levied as a consequence of concealment of income or on account of furnishing of inaccurate particulars.

6. In that view of the matter we find no ground to interfere with the view as taken by the ITAT. The appeal fails and shall stand dismissed alongwith pending application.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 5, 2024
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