

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER  
&  
SHRI K.N. CHARRY, JUDICIAL MEMBER**

**ITA Nos.-2068 & 2069/Del/2014  
(Assessment Years: 2002-03 & 2005-06)**

Bengali Sweet Centre G-19, South Extension Part-1, New Delhi. AABFB3097R	vs	ACIT Central Circle 12 New Delhi.
<b>Assessee by</b>	<b>Sh. M.P. Rastogi, Adv. And Sh. P.N. Shastri, CA</b>	
<b>Revenue by</b>	<b>Sh. S.K. Jain, DR</b>	

<b>Date of Hearing</b>	<b>27.03.2017</b>
<b>Date of Pronouncement</b>	<b>20.04.2017</b>

**ORDER**

**PER K. NARSIMHA CHARRY, J.M.**

Issue involved in both these appeals is one and the same as such it is convenient to dispose of these two appeals by way of a common order, by taking the facts relevant for the assessment year 2002-03. Briefly stated facts are that the assessee is a firm deriving its income in the business of manufacturing and retailing of sweets and namkeens. Consequent to the Survey operations

conducted at the business premises of the assessee on 10/11/2005 and notice u/s 153C of the Act, the assessee filed their return of income for the assessment year 2002-03 on 16/11/2006 declaring a total income of Rupees 6,61,436/-, and the assessment was completed on 27/12/2007 assessing the income at Rs. 28,24,190/- by adopting net profit at the rate of 10% of the gross sales after rejecting the books of account, and an addition of Rs. 21,62,754/- was made. Assessing officer also initiated penalty proceedings under section 271(1)(b) and (c) of the Act. Aggrieved by the additions to the income, assessee preferred an appeal before the Ld. CIT(A) and by way of an order dated 15/12/2009 LD CIT(A) restricted the addition to 1% of the sales. Subsequently, by way of order dated 02/09/2011 the Assessing Officer levied a penalty of Rs.96,494/-. In appeal, by way of impugned order, the learned CIT(A), confirmed the same. Hence the assessee is before us in appeal challenging the penalty order.

2. It is the argument of the Ld. AR is that the penalty order is bad under law because assessment order while initiating the *notice issued by the Assessing Officer under Section 274 read with Section*

*271(1)(c) of the Income Tax Act, 1961 did not specify under 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. Secondly contended that in the order dated 15/12/2009 the land learned CIT(A) while restricting the additions to 1% of the sales agreed with the assessee that no addition can be made to an assessment under section 143 (3) or 143 (1) unless some incriminating material in any of the six years involved during the search was found, but in order to cover the possible unvouched expenses debited in accounts and also to cover for the blank wages voucher obtained by the assessee the said addition was retained. He submits that in the circumstances the assessing officer is not justified in levying the penalty. Lastly he submitted that the penalty order is barred by limitation. Ld. ADR vehemently relied upon the orders of the authorities below.*

3. Now coming to the 1<sup>st</sup> argument that the penalty order is bad under law for non-specifying the charge in as much as it does not specify under which limb of section 271 (1) ( c ) of the acts the

action was taken, is concerned reliance is placed on the decisions of Hon'ble Karnataka High Court reported in CIT vs. SSA's Emerald Meadows in ITA 380/2015 and [Commissioner Of Income Tax -Vs- Manjunatha Cotton And Ginning Factory \(2013\) 359 ITR 565.](#)

4. In ITA 380/2015 the Hon'ble Karnataka High Court Considered the question of law as to,-

*“Whether, omission if assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?”*

and the Hon'be High Court ruled answered the same in favour of the assessee observing that:

*“The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') to be 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. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of COMMISSIONER OF INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed.”*

5. The Special Leave Petition filed by the Revenue challenging the aforesaid judgement of the High Court was dismissed by the Hon’ble Supreme Court holding :

*“We do not find any merit in this petition. The special leave petition is, accordingly, dismissed.”*

6. Respectfully following the above decisions, we hold that omission of assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty

order liable for cancellation and accordingly proceed to quash the same.

7. Since we quashed the penalty proceedings on the question of law, we do not propose to deal with the other aspects of the arguments of the ld. AR, since it would only be academic. With this view of the matter, we allow the grounds of appeal.

8. In the result, the appeals are allowed.

Order pronounced in the open court on 20.04.2017

Sd/-  
**(S.V. MEHROTRA)**  
**ACCOUNTANT MEMBER**  
Dated: 20.04.2017  
\*Kavita Arora

Sd/-  
**(K. NARSIMHA CHARRY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Draft dictated on	18.04.2017
Draft placed before author	18.04.2017
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	20.04.2017
Kept for pronouncement on	20.04.2017
File sent to the Bench Clerk	21.04.2017
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	