

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 1612/Kol/2014
Assessment Year: 2009-10

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| Phoenix Hitech Pvt. Ltd. (PAN:AADCP7251J) | Vs. | Assistant Commissioner of Income-tax Central Circle-XXIII, Kolkata. |
| Appellant | | Respondent |

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|-----------------------|-----------------------------------|
| Date of Hearing | 09.05.2017 |
| Date of Pronouncement | 24.05.2017 |
| For the Appellant | Shri Anil Kochar, Advocate |
| For the Respondent | Shri Nicholas Murmu, JCIT, Sr. DR |

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the assessee against the order of Ld. CIT(A), Central-III, Kolkata dated 30.06.2014 for AY 2009-10 confirming the penalty of Rs.3,09,001/- u/s. 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

2. At the outset itself, the Ld. Counsel for the assessee drew our attention to the notice u/s. 274 of the act r.w.s. 271 of the Act dated 29.12.2011 served on the assessee and contended that the said notice is bad in law for the reason that the AO did not specify the charge against which he proposes to initiate the penalty proceeding against the assessee. We note that the AO has not struck down the limb of charge/default for which the assessee was being served with the penalty notice. We find that the notice has been issued for having concealed the particulars of income or furnished inaccurate particulars of such income. We note that in a similar case the Hon’ble High court of Karnataka in the case of *CIT vs Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 (Kar)* has cancelled the penalty taking note of the fact that the penalty notice did not spell out clearly as to whether the assessee has concealed the

particulars of income or has furnished inaccurate particulars of Income. We also find that Hon'ble Karnataka High Court in the case of CIT Vs. SSA's Emerald Meadows, reported in (2016) 73 taxmann.com 241 (Kar) has held as under:

“3. 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 CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565/218 Taxman 423/35 taxmann.com 250(Kar).

4. 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.”

We also find that this issue has travelled to Hon'ble Supreme Court through SLP by the department which has been reported in (2016) 73 taxmann.com 248 (SC), wherein also the Hon'ble Supreme Court upheld the order of Hon'ble Karnataka High court and dismissed the SLP filed by the revenue.

3. We note that since the penalty notice issued to the assessee dated 29.12.2011 did not spell out as to which default the assessee has committed for which penalty u/s. 271(1)(c) of the Act has been initiated, therefore, following the Hon'ble Karnataka High Court's order in Manjunatha Cotton & Ginning Factory (supra) and SSA's Emerald Meadows (supra), we cancel the penalty confirmed by Ld. CIT(A) and, therefore, the appeal of assessee is allowed.

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

Order is pronounced in the open court on 24.05.2017.

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 24th May, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Phoenix Hitech Pvt. Ltd., C/o S. L. Kochar, Advocate, 86, Canning Street, Kolkata-1.
- 2 Respondent – ACIT, Central Circle-XXIII, Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.