

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

ITA No.616/Bang/2016
Assessment year : 2011-12

Shri. K. Srinath Reddy, #1814, I st Main, 9 th Cross, Bapuji Vidyanagar, Davangere. PAN : BCJPS8041K	Vs.	Income Tax Officer, Ward-2, Davangere.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Narendra Sharma, Advocate
Revenue by	:	Shri. M. K. Biju, JCIT

Date of hearing	:	27.3.2017
Date of Pronouncement	:	31.3.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order of CIT(A)
confirming the penalties levied under section 271(1)(c) of the Act.

2. During the course of hearing, the learned counsel for the assessee invited our attention to the notice issued under section 247 r.w.s. 271(1) of the Act for initiating the penalty proceedings with the submission that in this notice the AO has not specifically mentioned as to whether the assessee has concealed particulars of the income or furnished inaccurate particulars of such income. Therefore, the notice is bad and defective and the penalty order passed consequent to the notice is not sustainable in the eyes of law.

3. He has further invited our attention to the judgments of jurisdictional High Court in the case of *CIT Vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565* and other judgments of the jurisdictional High Court in the case of *CIT Vs. Ankitha Electronics Pvt. Ltd., 379 ITR 50 (Karnataka)* and judgment in the case of *CIT Vs. M/s. SSA's Emerald Meadows in ITA No. 380/2015* through which the Lordship of jurisdictional High Court has held that the notice issued by the AO under section 274 r.w.s. 271(1) of the Income Tax Act to be bad in law as it did not specify which limb of section 271(1)(c) of the Income Tax Act the penalty proceedings had been initiated i.e., for concealing of particulars of income or furnishing of inaccurate particulars of income. While holding so, the Lordship has relied upon the judgment of jurisdictional High Court in the case of *CIT Vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565*. Against the judgment, the revenue has filed SLP before the Supreme Court and vide its order dated 5.8.2016, the Hon'ble Apex Court has dismissed the writ petition having found no merit in the petition, copy of the order of the judgment of

jurisdictional High Court in the case of *CIT Vs. M/s. SSA's Emerald Meadows* and judgments of the Apex Court is placed on record.

4. The learned DR on the other hand placed reliance upon the order of the CIT(A).

5. Having carefully examined the orders of the authorities below and documents filed on record in the light of the judicial pronouncements referred to by the assessee, we find that in the case of *CIT Vs. Manjunatha Cotton and Ginning Factory (supra)* the Lordship has examined this issue in detail and have held that if the AO has not specifically mentioned in the notice as to whether the assessee has concealed the income or has furnished the inaccurate particulars of its income, the notice is defective for which penalty proceedings cannot be initiated. Their Lordship in that case has quashed the penalty proceedings. The view taken by the jurisdictional High Court has been followed by the Tribunal. This view was reiterated by the jurisdictional High Court in the case of *CIT Vs. M/s. SSA's Emerald Meadows* and the relevant observation of the Hon'ble High Court is extracted herein under for the sake of reference:

"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 **Commissioner of Income Tax Vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565.**"*

6. Against this judgment of jurisdictional High Court, the revenue has filed SLP before the Hon'ble Supreme Court in CC No.11485/2016 and through its order dated 5.8.2016, the Hon'ble Apex Court has dismissed the SLP having observed that there was no merit in the petition. Accordingly, the view taken by the Hon'ble High Court has been approved by the Hon'ble Supreme Court. The copies of the orders of the Hon'ble High Court and Hon'ble Supreme Court are placed on record.

7. In the instant case, the AO has not categorically mentioned in the notice issued under section 274 r.w.s.271 of the Act, as to whether the assessee has concealed the income or has furnished inaccurate particulars. Therefore, the notice is defective in terms of judgment of the Hon'ble jurisdictional High Court. Therefore, we hold that the penalty order passed consequent to defective notice is not sustainable in the eyes of the law. Accordingly, we set aside the order of the CIT(A) and delete the penalty levied under section 271(1)(c) of the Act.

8. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open court on this 31st day of March, 2017.

Sd/-
(S. JAYARAMAN)
Accountant Member

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore.

Dated: 31st March, 2017.

/NS/

Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.