

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA No.1003/Bang/2014
Assessment year : 2007-08

Shri G.S. Suhas, No.284, Narayana Pillai Street, Bangalore – 560 001. PAN: APMPS 7222P	Vs.	The Income Tax Officer, Ward 1(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheetal Borkar, Advocate
Respondent by	:	Dr. P.K. Srihari, Addl. CIT(DR)

Date of hearing	:	10.12.2015
Date of Pronouncement	:	05.02.2016

ORDER

Per Inturi Rama Rao, Accountant Member

This is an appeal filed by the assessee directed against the order of the Id. CIT(Appeals)-I, Bangalore dated 16.04.2014 for the assessment year 2007-08.

2. The assessee has raised the following grounds of appeal:-

- “1. On the facts and in the circumstances of the case, the learned CIT (Appeals) erred in passing the order in the manner he did.
2. The learned CIT (Appeals) erred in affirming the levy of penalty under Section 271(1)(c) as made by the assessing officer.
3. The learned CIT (Appeals) ought to have appreciated the explanation of the Appellant and ought to have refrained from confirming the levy of penalty.
4. The learned CIT (Appeals) ought to have appreciated that the explanation offered by the Appellant in respect of the facts material to the computation of his income was neither found to be false nor did the Appellant fail to prove his bona fides because, difference between the assessed income and income returned was voluntarily offered for peace and no tax was sought to be evaded.
5. Without prejudice, the levy of penalty under Section 271(1)(c) of the Act as confirmed by the learned CIT (Appeals) is arbitrary, unjust and uncalled for and therefore the penalty is liable to be deleted in full.
6. For these and other grounds that may be urged at the time of hearing of the appeal the Appellant prays that the appeal may be allowed.”

3. The has also filed the following additional grounds of appeal:-

- “1. The Assessing Officer having issued the notice under Section 274 read with Section 27 1(1)(c) of the Act in a mechanical manner, the penalty order passed under Section 271 (1)(c) of the Act is not sustainable in the eye of law.
2. The Appellant begs to submit that the decision of the jurisdictional High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Karn) is squarely applicable and therefore the impugned order of the authorities below is required to be set aside.”

4. Briefly the facts are that the appellant is an individual. He filed return of income for the AY 2007-08 on 4.1.2008 declaring an income of Rs.90,820. Against such return of income, assessment was completed u/s. 143(3) of the Act vide order dated 24.12.2009 at a total income of Rs.30,09,060. The disparity between the returned income and assessed income is on account of making addition of Rs.27,50,000 on account of unexplained deposits in the bank account of the appellant. The assessee had not contested the addition in appeal proceedings, thus the assessment attained finality.

5. While the matter stood thus, the AO had initiated penalty proceedings by issuing show cause notice u/s. 274 r.w.s. 271(1)(c) of the Act dated 24.12.2009. In response to the show cause notice, the explanation offered by the appellant is that the addition was agreed only to buy peace with the department and avoid protracted litigation and therefore his only contention was that in such circumstances, the penal provisions u/s. 271(1)(c) cannot be applied to him. The AO brushed aside the explanation offered by the assessee holding the assessee guilty of furnishing inaccurate particulars of income & concealing particulars of income and levied a penalty of Rs.9,28,478 vide order dated 25.6.2010.

6. Being aggrieved, an appeal was filed by the assessee before the CIT(Appeals)-I, Bangalore, who vide impugned order had dismissed the appeal by holding that the very fact that assessee agreed for addition and

paid tax thereon, cannot be a valid excuse for non-levy of penalty. Hence, the appellant is before is with the present appeal.

7. During the course of hearing, the Id. counsel for the appellant had only argued the additional grounds of appeal filed and submitted that the show cause notice was issued by the Assessing Officer in a mechanical manner and therefore applying the ratio of the decision of the Hon'ble jurisdictional High Court in the case of *CIT v. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Karn)*, the penalty order cannot be sustained.

8. On the other hand, the Id. Sr. DR relied on the orders of lower authorities.

9. We have heard the rival submissions and perused the material on record. We shall now take up the additional ground of appeal filed by the assessee which challenges the very validity of penalty proceedings initiated u/s. 271(1)(c) of the Act. Since this ground goes to the very root of the matter, we shall dwell on the same at the first instance. The contention of the assessee is that the Assessing Officer had not applied his mind and had initiated penalty proceedings. To demonstrate this issue, the assessee had filed before us copy of the show cause notice issued, wherein the AO had not struck off either of the two i.e., concealment of particulars of income or furnishing of inaccurate particulars of income. According to the assessee, this goes to show that the AO had not applied his mind and reach a satisfaction for initiating penalty proceedings.

10. Identical issue had come up before the Hon'ble jurisdictional High Court in the case of *CIT v. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Karn)*, wherein the following question of law was considered:-

"1. Whether the notice issued under section 271(1)(c) in the printed form without specifically mentioning whether the proceedings are initiated on the ground of concealment of income or on account of furnishing of inaccurate particulars is valid and legal?"

11. The Hon'ble High Court has held that when the AO had not marked the relevant column of the show cause notice, an inference can be drawn that the AO had not applied his mind. Therefore the penalty proceedings should be annulled. The relevant para is reproduced below:-

"61. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are different. Thus, the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The apex court in the case of *Ashok Pai* reported in [2007] 292 ITR 11 (SC) at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of *Manu Engineering Works* reported in [1980] 122 ITR 306 (Guj) and the Delhi High Court in the case of *CIT v. Virgo Marketing P. Ltd.* reported in [2008] 171 Taxman 156, has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of

income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind.”

12. Applying the above legal position to the facts of the present case, from the show cause notice it is clear that the AO had not marked the relevant column and it is not clear whether the AO had initiated penalty proceedings for concealment or furnishing of inaccurate particulars of income. Therefore, respectfully following the ratio laid down by the Hon'ble jurisdictional High Court in the case of *Manjunatha Cotton & Ginning Factory (supra)*, we cannot sustain the penalty levied in the present case.

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

Pronounced in the open court on this 05th day of February, 2016.

Sd/-

(VIJAY PAL RAO)
Judicial Member

Sd/-

(INTURI RAMA RAO)
Accountant Member

Bangalore,
Dated, the 05th February, 2016.
/D S/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.