

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND  
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**ITA NO. 3382/MUM/2015 : (A.Y : 2004-05)**

Smt. Sejal P. Savla  
G-1/2, Mangal Kunj, S.V. Road,  
Opp. Jambli Gully, Jain Temple,  
Borivali (W), Mumbai 400 092  
**PAN : AAKPS2908K (Appellant)**

Vs. ACIT, Central Circle-33,  
Mumbai (Respondent)

**Assessee by : Shri Ashok Sutar  
Revenue by : Shri Uday Bhaskar Jakke**

**Date of Hearing : 20/07/2016  
Date of Pronouncement : 10/08/2016**

**ORDER**

**PER SANDEEP GOSAIN, JM :**

The present appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-53, Mumbai (in short 'CIT(A)') dated 27.02.2015 for A.Y 2004-05 on the following grounds of appeal :

*"1. The order of penalty passed by the learned assessing officer under section 271[1][c] and confirmed by the learned Commissioner of Income-tax [Appeals], in so far as it is against the Appellant, is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.*

*2. The learned Commissioner of Income-tax [Appeals] failed to appreciate the fact that the order passed by the learned assessing officer under section*

*271[1][c] of the Income-tax Act, 1961 is without assumption of proper jurisdiction as the mandatory conditions for invoking the provisions of section 271[1][c] of the Act has not been complied with under the facts and circumstances of the case.*

*2.1 The learned Commissioner of Income-tax [Appeals] failed to appreciate the fact that the levy of penalty is not automatic and the learned assessing officer ought to have exercised his discretion before levying penalty under the facts and circumstances of the case.*

*2.2 The learned Commissioner of Income-tax [Appeals] failed to appreciate the fact that the Notice for initiation of penalty as to whether it is concealment of income or furnishing of inaccurate particulars of income is not discernable from the notice issued and consequently the learned Commissioner of Income-tax [Appeals] ought to have cancelled the order of penalty under the facts and circumstances of the case.*

*2.3. The learned Commissioner of Income-tax [Appeals] failed to appreciate that the penalty proceedings are independent with that of the assessment proceedings under the facts and circumstances of the case.*

*2.3 The learned Commissioner of Income-tax [Appeals] failed to appreciate that the appellant has neither concealed any income nor furnished inaccurate particulars of income to warrant levy of penalty and therefore the penalty levied under section 271[1][c] of the Act requires to be cancelled.*

*3. The order of penalty passed by the learned assessing officer is barred by limitation and the order passed is beyond the prescribed period as envisaged in the statute and such order which is passed beyond time do not have any legs to stand the test of law under the facts and circumstances of the case.*

*4. The Appellant denies himself liable for penalty imposed of Rs.1,00,000/- by the learned assessing officer under section 271(1) (c) of the Act and confirmed by the learned Commissioner of Income-tax [Appeals] under the facts and circumstances of case.*

5. *The learned assessing officer failed to appreciate that the penalty proceedings are independent with that of the assessment proceedings and ought to have verified the facts of the case independently under the facts and circumstances of the case.*

6. *The learned authorities below failed to appreciate the fact that the appellant had discharged the primary onus casted upon the appellant by filing the confirmation and all the details and the learned authorities without appreciating this fact has erred in holding that since the donor's bank statement has not being submitted the same was considered as unexplained gift, even though there was no material found by the department during the course of search in this regard & no inquiry done in the matter under the facts and circumstances of the case.*

7. *The learned assessing officer failed to appreciate that the appellant has neither concealed any income nor furnished inaccurate particulars of income to warrant levy of penalty and therefore the penalty levied u/s. 271(1)(c) of the Act requires to be cancelled.*

8. *The learned assessing officer failed to appreciate the fact the appellant had provided all the details and co-operated in the assessment proceedings voluntarily and in good faith and further proceeds to invoke the provisions of section 271(1)(c) of the Act as no penalty was warranted under the facts and circumstances of the case.”*

2. The brief facts of the case are that the order u/s 143(3) r.w.s. 153C of the Income Tax Act, 1961 (in short 'the Act') was made on 30.12.2009. During the course of assessment proceedings, the Assessing Officer had made following addition/disallowance –

- (i) Gifts received – Rs. 1,00,000/-

The Assessing Officer initiated penalty proceedings u/s 271(1)(c) of the Act on account of above mentioned addition/disallowance and on account of unsecured loan amounting to Rs. 1,50,000/- which was not

disclosed in the original return. The assessee filed an appeal with the CIT(A) against the order of assessment but the CIT(A) dismissed the appeal filed by the assessee confirming the additions made by the Assessing Officer. Consequently, the penalty proceedings were initiated by the Assessing Officer and after serving statutory notice and providing opportunity of hearing, order of penalty u/s 271(1)(c) r.w.s. 274 of the Act was passed by the Assessing Officer vide order dated 30.3.2012 thereby imposing penalty of Rs. 75,000/-. Aggrieved by the order of penalty, the assessee preferred appeal before the CIT(A) and CIT(A), after hearing the parties had partly allowed the appeal while finding no fault in the action of Assessing Officer in levying penalty u/s 271(1)(c) of the Act in respect of gift of Rs. 1 lac. Therefore, the Assessing Officer was directed to re-compute the amount of penalty leviable in respect of gift of Rs. 1 lac only. Aggrieved by the order of CIT(A), assessee has preferred the present appeal before us on the grounds mentioned above.

3. Ground nos. 1 to 8 - All the grounds of appeal are interrelated and interconnected; therefore, we thought it fit to dispose of the same by a common order.

4. At the very outset, the Ld. AR representing the assessee submitted that the Ld. CIT(A) failed to appreciate the fact that notice for initiation of penalty as to whether it is for concealment of income or furnishing of inaccurate particulars of income is not discernable from the notice issued and consequently, Ld. CIT(A) ought to have cancelled the order of penalty under the facts and circumstances of

the case. In this respect, our attention was drawn to page 38 of Paper Book, which is the notice u/s 271(1)(c) of the Act. The Ld. AR further submitted that in this notice it is nowhere mentioned as to whether it is for concealment of income or furnishing of inaccurate particulars of income and relied upon the order passed by coordinate bench of the Tribunal in case of *Sanghavi Savla Commodity Brokers P. Ltd.* in ITA No. 1746/Mum/2011 dated 22.12.2015.

5. On the other hand, the Ld. DR appearing for the Revenue relied on the order passed by the Id. CIT(A).

6. We have perused the order of the coordinate bench of the Tribunal in the case of *Sanghavi Savla Commodity Brokers P. Ltd.* (supra), the operative para of which is as under :-

*“4.2 We have heard the rival contentions on the issue of admission of additional ground raised by the assessee (supra) and considered the material on record in this regard. We find that the additional ground raised by the assessee is a purely legal ground and since the same goes to the very root of the matter regarding the levy of penalty under section 271(1)(c) of the Act, we therefore admit the same for consideration and adjudication in this appeal.*

*4.3 Alongwith the application for admission of additional grounds, the assessee has also filed a copy of the notice issued under section 274 r.w.s. 271 of the Act dated 30.12.2009 for initiating of the penalty proceedings under section 271(1)(c) of the Act for A.Y. 2007-08. The learned A.R. for the assessee also placed before the Bench, for our perusal, the original notice issued by the AO. A perusal of the notice issued under section 274 r.w.s. 271 of the Act dated 20.12.2009 (copy placed at paper book-2) reveals that the AO has not deleted the inappropriate words and parts of the notice, whereby it is not clear as to the default committed by the assessee, i.e. whether it is*

*concealment of particulars of income or furnishing of inaccurate particulars of income that the penalty under section 271(1)(c) of the Act is sought to be levied. In this regard, we find that the Hon'ble High Court of Karnataka in its order in the case of M/s Manjunatah Cotton & Ginning Factory in ITA No.2546 of 2005 dated 13.12.2012, relied on by the assessee, has held that such a notice, as has also been issued in the case on hand, is invalid and the consequential penalty proceedings are also not valid. The relevant portion of their Lordships judgement at paras 59 to 62 thereof are extracted hereunder for reference: -*

*“59. As the provision stands, the penalty proceedings can be initiated on various ground set therein. If the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation-1 or in Explanation-1(B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty on him as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in Section 271(1)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under Section 274 should satisfy the grounds which he has to*

*meet specifically. Otherwise, principles of natural justice is offended if the show cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.*

60. *Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.*

*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 292 ITR 11 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 reported in 122 ITR 306 and the Delhi High Court in the case of VIRGO MARKETING reported in 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. Thom, 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.”*

*The conclusion drawn therein by their Lordships at para 63 thereof and particularly at p) to s) thereof are as under: -*

*“63 .....*

*a) .....*

*p) Notice under section 274 of the Act should specifically state the ground mentioned in Section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income.*

*q) Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law.*

*r) The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.*

*s) Taking up of penalty proceedings on the limb and finding the assessee guilty of another limb is bad in law.”*

*4.4 It may be mentioned that in this regard, no contrary decision of the Hon'ble Apex Court or the Hon'ble Bombay High Court has been brought to our notice or placed before us for consideration. Therefore, respectfully following the decision of the Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory reported in (2013) 359 ITR 565 (Kar), we hold that the notice issued under section 274 r.w.s. 271 of the Act dated 30.12.2009 for A.Y. 2007-08 for initiating penalty proceedings under section 271(1)(c) of the Act in the case on hand is invalid and consequently, the penalty proceedings are also invalid. In this view of the matter, the additional ground raised by the assessee is allowed since the very basis for the levy of penalty under section 271(1)(c) of the Act has been held to be invalid, we are of the view that the other grounds of appeal at S.Nos. 1.1 to 2.1 (supra) raised by the assessee against the merits of the levy of penalty under section 271(1)(c) of the Act require no adjudication at this stage.*

*5. In the result, assessee's appeal for A.Y. 2007-08 is allowed.”*

7. We have analyzed and appreciated the orders passed by the coordinate bench of the Tribunal in the aforementioned case and point in dispute in the aforementioned case is identical with the point in dispute in the present case. The coordinate bench of the Tribunal has relied upon the judgment of the Hon'ble Karnataka High Court in the case of M/s. Manjunatha Cotton & Ginning Factory (*supra*) and has categorically held that very basis for levy of penalty u/s 271(1)(c) of the Act to be invalid. Therefore, in accordance with the findings

recorded by the coordinate bench of the Tribunal, we also hold that the notice in the present case, which is at page 38, does not reflect as to whether the present notice for initiation of penalty has been issued for concealment of income or furnishing of inaccurate particulars of income and hence the very basis for levy of penalty u/s 271(1)(c) of the Act is held to be invalid. We, therefore, respectfully following the decision of the Hon'ble Karnataka High Court in the case of M/s. Manjunatha Cotton & Ginning Factory (supra) and relying upon the order passed by the coordinate bench of the Tribunal in the case of Sanghavi Savla Commodity Brokers P. Ltd. (supra) hold that the notice issued u/s 274 r.w.s. 271(1)(c) of the Act dated 30.12.2009 for A.Y 2004-05 initiating the penalty proceedings u/s 271(1)(c) of the Act in the case in hand is invalid and consequently, the penalty proceedings are also invalid. We are also of the view that the other grounds raised by the assessee against the merits of the levy of penalty u/s 271(1)(c) of the Act requires no adjudication at this stage.

8. In the net result, the appeal filed by the assessee for Assessment Year 2004-05 is allowed.

Order pronounced in the open court on 10<sup>th</sup> August, 2016.

Sd/-  
**(R.C. SHARMA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Mumbai, Date : 10<sup>th</sup> August, 2016

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "B" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai