

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH " B "**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER AND  
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

I.T.A. No.1485/Bang/2013  
(Assessment Year : 2002-03)

M/s. Roadlinks India Pvt. Ltd.,  
No.99/D, KHB Colony, 2<sup>nd</sup> Cross,  
5<sup>th</sup> Block, Koramangala, Bangalore.  
PAN AAACR 8620C

.... Appellant

Vs.

Asst. Commissioner of Income Tax,  
Circle 12(2), Bangalore.

..... Respondent.

Appellant By : Shri V. Srinivasan, C.A.  
Respondent By : Dr. P.K. Srihari, Addl. CIT (D.R)

Date of Hearing : 19.1.2015.  
Date of Pronouncement : 27.2.2015.

**O R D E R**

**Per Shri Jason P. Boaz :**

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-I, Bangalore dt.11.9.2013 confirming the levy of penalty under Section 271(1)(c) of the Income Tax Act, 1961 (herein after referred to as 'the Act') by the Assessing Officer for Assessment Year 2002-03, with partial modification.

2. The facts of the case, briefly, are as under :-

2.1 The assessee, a company carrying on the business of transporters, filed its return of income for Assessment Year 2002-03 on 29.10.2002 declaring NIL income after setting off

unabsorbed depreciation of Assessment Year 1996-97 to the extent of Rs.2,54,654. 'Book Profits' of Rs.1,45,662 were computed and declared under Section 115JB of the Act. The case was selected for scrutiny and the assessment was completed under Section 143(3) of the Act vide order dt.28.3.2005, wherein the income of the assessee was determined at Rs.3,06,290 after setting off of unabsorbed depreciation of Rs.25,57,780; as against the returned income at Nil; in view of the addition of Rs.28,58,070 on account of unexplained cash credits under Section 68 of the Act. Aggrieved by the order of assessment dt.28.3.2005, the assessee preferred an appeal before the CIT (Appeals) which was dismissed. On further appeal by the assessee, the co-ordinate bench of this Tribunal vide its order in ITA No.906/Bang/2007 dt.17.10.2008 upheld the additions of unexplained cash credits under Section 68 of the Act of Rs.9,00,450 and Rs.49,140.

2.2 Before the disposal of the assessee's appeals against the orders of assessment before the Tribunal, the Assessing Officer who had initiated penalty proceedings in the order of assessment by issue of notice under Section 274 r.w.s. 271 of the Act, dt.28.3.2005, proceeded to levy penalty of Rs.10,21,000 @ 100% of tax evaded, under Section 271(1)(c) of the Act vide order dt.30.9.2005.

2.3 Aggrieved by the order dt.30.9.2005, wherein the Assessing Officer had levied penalty of Rs.10,21,000 under Section 271(1)(c) of the Act for Assessment Year 2002-03, the assessee preferred an appeal before the CIT (Appeals) - I, Bangalore. The learned CIT(A) vide the impugned order dt.11.9.2013, dismissed the assessee's appeal and confirmed the levy of penalty under Section 271(1)(c) of the Act. The learned CIT(A), however, restricted the

penalty to be imposed to the amounts of Rs.9,00,450 and Rs.49,140; which was confirmed on appeal by the co-ordinate bench of this Tribunal in its order in ITA No.906/Bang/2007 dt.17.10.2008. Thus, the penalty levied under Section 271(1)(c) of the Act in respect of the addition of Rs.28,58,070, in respect of unexplained cash credits under Section 68 of the Act, was modified and the said penalty was confirmed in respect of the additions to the extent of Rs.9,49,590 (i.e. Rs.9,04,450 plus Rs.49,140) which were upheld in the order of the co-ordinate bench of this Tribunal (supra).

3. Aggrieved by the order of the CIT (Appeals) - I, Bangalore dt.11.9.2013 for Assessment Year 2002-03, the assessee is now in appeal before us raising the following grounds :-

" 1. *The orders of the authorities below in so far as levying penalty under Section 271(1)(c) of the Act against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

2. *The order levying penalty under Section 271(1)(c) of the Act, is bad in law in as much as, the Id. Assessing Officer has neither reached any satisfaction nor has such satisfaction been recorded in the assessment order and consequently, the very initiation of proceedings under Section 271(1)(c) of the Act, is not in accordance with the requirements of section 271(1) of the Act and consequently, the order of penalty founded on the invalid initiation of penalty proceedings is liable to be cancelled.*

3. *The Id. CIT (Appeals) is not justified in upholding the penalty under Section 271(1)(c) of the Act in respect of the following additions of Rs.9,49,590 sustained in appellate proceedings under the facts and in the circumstances of the appellant's case.*

a) *Unexplained cash deposit in the Bank account :* Rs.9,00,450.

b) *Unexplained cash credit in the name of Ms. Rahana Ahmed :* Rs.49,140

Rs.9,49,590.

4. *The authorities below 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.*

5. *Without prejudice to the above, the penalty levied is highly excessive and liable to be reduced substantially.*

6. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

4.1 In the course of hearings before the Bench on 10.1.2015, the assessee filed an application for admission of additional grounds of appeal :-

*"1. The order of penalty passed under Section 271(1)(c) of the Act is bad in law as the notice issued under Section 274 rws 271 of the Act is not discernable as to whether the penalty proceedings is initiated for furnishing of inaccurate particulars of income or concealment of income under the facts and in the circumstances of the appellant's case and therefore, the impugned order passed deserves to be cancelled.*

*2. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and justice rendered."*

4.2 The additional ground (supra) is raised challenging the validity of the notice issued under Section 274 r.w.s. 271(1)(c) of the Act dt.28.3.2005; which is without any mention of the default of the assessee for which penalty proceedings are initiated. The learned Authorised Representative also placed before us copy of the decision of the co-ordinate bench of the Tribunal in the case of Sri N.V. Jayaram in ITA No.1639/Bang/2013 dt.10.12.2014 wherein the Tribunal in similar circumstances has admitted the additional ground and disposed off the appeal on the legal grounds so raised.

5.1 We have heard both parties and perused and carefully considered the material on record. 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 relating to the levy of penalty under Section 271(1)(c) of the Act, we therefore admit the same for consideration and adjudication in this appeal.

5.2 Along with the application for admission of additional grounds, the assessee has also filed a copy of the notice under Section 274 r.w.s. 271 of the Act dt.28.3.2005 for initiation

of penalty proceedings under Section 271(1)(c) of the Act for Assessment Year 2002-03. The learned Authorised Representative also placed before the Bench, for our perusal, the original notice dt.28.3.2005 issued by the Assessing Officer. A perusal of the notice issued under Section 274 r.w.s. 271 of the Act dt.28.3.2005, reveals that the Assessing Officer 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 the 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. We find that the Hon'ble High Court of Karnataka in its order in the case of M/s. Manjunatha Cotton & Ginning Factory in ITA No.2564 of 2005 dt.13.12.2012 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 the judgment of the Lordships at paras 59 to 61 thereof is extracted hereunder for ready reference :-

*"59. As the provision stands, the penalty proceedings can be initiated on various grounds set out 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. 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'.*

5.3 Respectfully following the judgment of the Hon'ble jurisdictional High Court of Karnataka, we hold that the notice issued under Section 274r.w.s. 271 of the Act dt.28.3.2005 for Assessment Year 2002-03 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 grounds raised by the assessee are allowed. Since the very basis for levy of penalty under Section 271(1)(c) of the Act has been held to be invalid, we are of the considered view that the other grounds of appeal at S.Nos.1 to6 (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.

6. In the result, the assessee's appeal for Assessment Year 2002-03 is allowed.

Order pronounced in the open court on 27<sup>th</sup> Feb., 2015.

Sd/-  
**(RAJPAL YADAV)**  
Judicial Member

Sd/-  
**(JASON P BOAZ)**  
Accountant Member

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