

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER AND
SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER**

**ITA No. 2284/Del/2015
A.Y. 2011-12**

Smt.Parmeshwari Devi
Prop. M/s Garg Traders
107, 1st floor, W Mali
Manglam Place, Rohini
Delhi 85

vs.

ITO, Ward 21(2)
New Delhi

PAN: AHCPD 1862 A

(Appellant)

(Respondent)

Appellant by : Sh. C.S.Anand, Adv.

Respondent by : Sh. K.K.Jaiswal, D.R.

ORDER

PER J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the Assessee directed against the order of the Ld.Commissioner of Income Tax (Appeals)-13, New Delhi dt. 4.3.2015 pertaining to the Assessment Year (A.Y.) 2011-12, wherein penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 (the Act) is confirmed.

2. After hearing rival contentions we find from the show cause notice that the AO has not specified the charge as to whether the notice was for non-compliance of notice u/s 142(1)/143(2) of the Act or for concealment of income or furnishing of inaccurate particulars of income.

2.1. None of the alternative columns were struck off by the A.O. Under these circumstances we have to quash the penalty levied by following the judgement of Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton Ginning Factory, 359 ITR 565, wherein the Hon'ble

High Court considered the entire case law on the subject of levy of penalty u/s 271(1)(c) of the Act and summarized the law as follows.

“Merely because the assessee agreed for addition does not lead to the inference that the said addition is on account of concealment if the assessee has offered an explanation which is not found to be false. The mere fact that the assessee agreed to pay tax and did not challenge the assessment order does not mean that his conduct is mala fide. The following principles apply:

(a) Penalty under Section 271(1)(c) is a civil liability.

(b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.

(c) Wilful concealment is not an essential ingredient for attracting civil liability.

(d) Existence of conditions stipulated in Section 271(1)(c) is a sine qua non for initiation of penalty proceedings under Section 271.

(e) The existence of such conditions should be discernible from the Assessment Order or order of the Appellate Authority or Revisional Authority.

(f) Even if there is no specific finding regarding the existence of the conditions mentioned in Section 271(1)(c), at least the facts set out in Explanation 11(A) and (B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.

(g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(1)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1 (B).

(h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Appeals and the Commissioner.

(i) The imposition of penalty is not automatic.

(j) Imposition of penalty even if the tax liability is admitted is not automatic.

(k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the Assessing Officer in the assessment order.

(l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not 'bonafide, an order imposing penalty could be passed.

(m) If the explanation offered, even though not substantiated by the assessee, but is found to be bonafide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.

(n) The direction referred to in Explanation IB to Section 271 of the Act should be clear and without any ambiguity.

(o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records

satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the Assessing Authority.

(p) Notice under Section 274 of the Act should specifically state the grounds 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 one limb and finding the assessee guilty of another limb is bad in law.

(t) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.

(u) The findings recorded in the assessment proceedings insofar as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared as invalid in the penalty proceedings."

2.2. Similarly the ITAT, Mumbai Bench in the case of Shri Hafeez S. Contractor vs. ACIT (in ITA nos. 6222 and 6223/2013 held that the penalty u/s 271(1)(c) cannot be imposed in case where no specific charges are mentioned in the penalty notice.

3. In the result assessee's appeal is allowed.

Order pronounced in the Open Court on 15th February, 2016.

**Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER**

**Sd/-
(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER**

Dated: the 15th February, 2016

- Manga

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR