

3. None appeared on behalf of the revenue and no adjournment petition was even preferred by the revenue on the scheduled date of hearing. Accordingly we proceed to hear the Id AR and dispose the case based on the material available on record. At the outset , we find that the Id AR stated that the show cause notice issued by the Id AO for initiation of penalty u/s 271(1)(c) of the Act was defective in nature as the Id AO had not struck down the limb of charge / default for which the penalty is being initiated against the assessee. We find that the notice has been issued for having concealed the particulars of income or furnished inaccurate particulars of such income . We note that in a similar case, the *Hon'ble Karnataka High Court in the case of CIT vs Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 (Kar)* has cancelled the penalty taking note of the fact that the penalty notice did not spell out clearly as to whether the assessee has concealed the particulars of income or has furnished inaccurate particulars of income. We also find that *Hon'ble Karnataka High Court in the cae of CIT vs SSA's Emerald Meadows, reported in (2016) 73 taxmann.com 241 (Kar)* endorsed the same view in *Manjunatha Cotton and Ginning Factory (supra)* and held as under:-

“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 CIT vs Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 / 218 Taxman 423 / 35 taxmann.com 250 (Kar).

4. In our view, since the matter is covered by judgement of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed.”

We also find that the aforesaid order of the Hon'ble High Court was challenged by the department before the *Hon'ble Supreme Court by preferring a Special Leave Petition*

(SLP) which has been dismissed which fact has been reported in (2016) 73 taxmann.com 248 (SC).

4. We note that since the penalty notice issued to the assessee dated 31.12.2009 did not spell out as to which default the assessee has committed for which penalty u/s 271(1)(c) of the Act has been initiated, therefore, respectfully following the Hon'ble Karnataka High Court's order in Manjunatha Cotton and Ginning Factory (supra) and SSA's Emerald Meadows (supra), we cancel the penalty imposed by the Id AO which has been rightly deleted by the Id CITA, though the penalty has been deleted by the Id CITA on a different ground. However we proceed to dismiss the grounds of the revenue on the preliminary aspect of issuance of defective notice for levy of penalty and refrain to express any opinion on the merits of the case. Accordingly, the grounds raised by the revenue are dismissed.

5. In the result, the appeal of the revenue is dismissed.

Order pronounced in the Court on 11.08.2017

Sd/-
[A.T. Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 11.08.2017

SB, Sr. PS

Copy of the order forwarded to:

1. I.T.O., Ward8(1), Kolkata, P-7, Chowringhee Square, 5th Floor, Kol-700069
2. M/s Bagri Impex Pvt. Ltd., 207, Maharsi Debendra Road, 3rd Floor, Room No.-66, Kol-700007
- 3..C.I.T.(A)-11, Kolkata 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches