

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DELHI**
**BEFORE SH.G.D.AGARWAL, HON'BLE PRESIDENT
AND
SH.K.N.CHARY, JUDICIAL MEMBER**

ITA No. 5988/Del/2016
(ASSESSMENT YEAR: 2006-07)

Sanraj Engineering Pvt.Ltd., A-4/B-1, Mohan Coop Incl. Estate, New Delhi. PAN-AACCS6897E	vs	ITO, Ward-7(3), New Delhi.
(Appellant)		(Respondent)

Appellant by	Sh. Ashwani Kumar, Adv.
Respondent by	Sh. S.S.Rana, CIT DR
Date of Hearing	11.10.2017
Date of Pronouncement	27.10.2017

ORDER

PER K.N.CHARY, JUDICIAL MEMBER

Aggrieved by the order dated 29.09.2016 in appeal No.84/13-14 passing by the Commissioner of Income Tax (Appeal) [in short "CIT(A)"]-28, New Delhi for 2006-07 Assessment Year, assessee preferred this appeal on the following grounds:-

"That the order dated 29.09.2016 passed u/s 250(6) of the Income Tax Act, 1961 is against law and facts on the file as he was not justified to partly uphold the action of the Ld. Assessing Officer in restricting the penalty u/s 271(1)(c) of the Income Tax Act, 1961 of rs.71,99,070/- (as against Rs.81,68,916/- imposed by the Ld. Assessing Officer) by granting relief of only Rs.8,69,846/- for alleged concealment/furnishing inaccurate particulars of income, without considering the facts and circumstances of the case and the legal position in much as no such penalty is exigible in the facts & circumstances of the case."

2. However, subsequently the assessee pleaded the following additional grounds:-

“That the order dated 29.09.2016 passed u/s 250(6) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals) 28, New Delhi is against law and facts on the file in as much as he was not justified to partly uphold the action of the Ld. Assessing Officer in levying penalty of Rs.71,99,070/- u/s 271(1)(c) of the Income Tax Act, 1961 by ignoring the fact that while the penalty proceedings had been initiated for alleged concealment of income, the same had been levied on grounds of alleged furnishing inaccurate particulars of income thereby rendering the same void ab-initio.”

3. Briefly stated facts are that the assessee is a company, filed their return of income on 30.11.2006 declaring the income as NIL. During the scrutiny proceedings, among other things, the AO found that the assessee has shown to have taken unsecured loans of Rs.4,04,30,000/- during the relevant year and after giving an opportunity of being heard to the assessee, the AO concluded that in respect of six of the eligible creditors, the assessee failed to prove their identity, their creditworthiness and the genuineness of the transactions, as such the AO concluded that the transactions in respect of such creditors are all sham as such by invoking provisions u/s 68 of the Act, the AO made an addition to the tune of Rs.2,40,00,000/- among other things. The details of such alleged creditors are as follows:-

1. Sonal Gupta	Rs.35,00,000/-
2. Gauri Gupta	Rs.27,25,000/-
3. Navneet Gupta, HUF	Rs. 5,75,000/-
4. Cactus Menswear Fashion P Ltd.	Rs.20,00,000/-
5. Nirvana India P Ltd.	Rs.1,40,00,000/-
6. Parul Gutpa	Rs.12,00,000/-
	<u>Rs.2,40,00,000</u>

4. In appeal preferred by the assessee, the assessee filed an application u/s 46A of the Income Tax Rules, 1962 on 16.03.2009 and vide order dated 18.03.2009, the Remand Report was sought and vide Remand Report dated

19.05.2009, the AO stated that pursuant to the remand proceedings, notice u/s 133(6) of the Act was issued and in response to the same, the above persons furnished the copies of their ITRs & bank statements along with confirmation of having given the unsecured loans. AO further stated that one Ms. Parul Gupta stated that she had given loan on 13.03.2006 but the cheque was cleared only on 09.05.2006, as such she was under the impression that the loan was given in the FY 2006-07. Having considered the Remand Report and rejoinder thereto, Ld. CIT(A) held that the cash creditors were identified and it was established that it was established their capacity to lend the money to the assessee and genuineness of the transaction was proved, as such no recourse could be taken under the provision of section 68 of the Act. Holding so, Ld.CIT(A) deleted the addition of Rs.2,40,00,000/-. On that, when the Revenue approached the Income Tax Appellate Tribunal, a Co-ordinate Bench of this Tribunal vide order dated 14.06.2010 remitted matter back to the file of the Ld.CIT(A) of giving specific finding as to whether the creditworthiness of these loan creditors was established or not. On the matter being remanded, Ld. CIT(A) vide order dated 17.01.2013 confirmed the additions made in the assessment order, holding that the assessee has not provided any details like balance sheet, regular source of income or the reason why such huge amount of loan was given without interest as such the creditworthiness of the parties was not established. Subsequent appeals by the assessee to the ITAT and Hon'ble High Court were dismissed and the addition attained finality.

5. A show cause notice for levy of penalty u/s 271(1)(c) of the Act was issued by the AO and the AO having considered the reply dated 17.04.2013 submitted by the assessee, passed the order dated 26.04.2013 levying the penalty of

Rs.81,68,920/- which was confirmed by the Ld.CIT(A) by the impugned order dated 29.09.2016 hence this appeal by the assessee.

6. It is the argument of the Ld. AR that there is neither concealment of income nor furnishing of inaccurate particulars thereof, but the entire addition of Rs.2.4 crores revolves around the acceptance or non-acceptance of the plea of the assessee and the sufficiency of the evidence produced by the assessee to prove the creditworthiness of the loan creditors and the genuineness of the transactions. It is further submitted by the Ld.AR that in this matter in the order vide 29.12.2008 passed u/s 143(3) of the Act by the AO making the addition, AO observed that the assessee company was guilty of concealment of particulars of income whereas the notice issued u/s 274 r.w.s. 271 of the Act, does not specify under which limb of section 271(1)(c) of the Act, the penalty was proposed, but the penalty order dated 26.04.2013 vide paragraph No.4.2 says that the assessee company had furnished inaccurate particulars of income to the extent of Rs.96,98,457/-. It is the argument of the Ld.AR that in view of the decision of *CIT vs Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar)*, drawing a penalty proceedings for one offence and finding the assessee guilty cannot be sustained in law.

7. Per contra, it is the argument of the Ld. DR that the addition made by the AO, was finally confirmed by the Ld. CIT(A), ITAT and also the Hon'ble High Court as such there cannot be any doubt that even though the parties did not have the creditworthiness the loans to the assessee, only in order to route the assessee's own funds through such creditors, the assessee devised these unsecured loans and thereby they are guilty of furnishing of inaccurate particulars as such in view of the additions reported in *K.P.Madhusudhanan vs CIT [2001] 118 Taxman 324*

(SC)/[2001] 251 ITR 99 (SC)/ [2001] 169 CTR 489 (SC); Union of India vs Dharamendra Textile Processors [2007] 295 ITR 244; CIT vs Zoom Communication P.Ltd. (191 Taxman 179 [Delhi])/[2010] 327 ITR 510 (Delhi)/ [2010]233 CTR 465; MAK Data P.Ltd. vs CIT [38 taxmann.com 448 (SC)/ [2013] 358 ITR 593 (SC)/(2013) 263 CTR 1]; B.A. Balasubramaniam & Bros. Co vs CIT [116 taxman 842, 236 ITR 977, 157 CTR 556]; and CIT vs Escorts Finance Ltd. [183 Taxman 453 (Del)/ 920100 328 ITR 44 (Delhi)/ (2009) 226 CTR 105], whenever the claim made in the return of income was found to be ex-facie bogus, such a case would be treated as concealment or furnishing of inaccurate particulars and the penalty proceedings are justified.

8. We have carefully gone through the contentions of either side and perused the material papers on record. Order dated 29.12.2008 passed u/s 143(3) of the Act reads that since the assessee company has concealed particulars of income, penalty proceedings u/s 271(1)(c) of the Act are being initiated. Further the penalty order dated 26.04.2013 vide para 3.2 says that the AO is satisfied with the assessee company had furnished inaccurate particulars of its income to the extent of Rs.2,40,00,000/- and Rs.96,98,457/-, provisions u/s 271(1)(c) of the Act are clearly attracted and, therefore, penalty of Rs.81,68,920/- was levied. Impugned notice u/s 274 r.w. sec 271 of the Act is a printed form wherein the relevant portion relating to the limb of charge is as follows:

“

**have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2, 3, 4 and 5.*

.....”

9. It, therefore, is amply clear that the Assessing Officer has not specified whether the notice was issued for concealment of particulars of income or for furnishing of inaccurate particulars of income. We have carefully perused the material papers on record in the light of the statements made on behalf of the assessee including the judgment relied upon by him in the case of *CIT vs Manjunatha Cotton & Ginning Factory*, 359 ITR 565 (Kar). Vide paragraph 60, the Hon'ble Karnataka High Court has held as follows :-

“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.”

10. The Hon'ble Karnataka High Court in *CIT vs SSA's Emerald Meadows*, [2016] 73 taxmann.com 241 (Karnataka) has followed the Division Bench judgment in the case of *CIT vs Manjunatha Cotton & Ginning Factory*, 359 ITR 565 (Kar). Hon'ble Supreme Court in *SSA's Emerald Meadows (supra)* dismissed the SLA preferred against the decision of the Hon'ble Karnataka High Court in the case of *CIT vs SSA's Emerald Meadows*, [2016] 73 taxmann.com 241 (Karnataka). The principle laid down by these decisions is clear that 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 and the notice issued u/s 274 r.w.s. 271(1)(c) of the Act shall specify under which limb of Sec. 271(1)(c) of the Act the penalty proceedings were initiated, and in the absence of such clarity, the proceedings are bad in law. We, therefore, while respectfully following the judgements referred to above, hold that the impugned penalty proceedings are bad in law and cannot be sustained. We, therefore, while quashing the proceedings, allow the appeals. Since we propose to quash the proceedings on the question of law, we do not deem it necessary to delve deeper into merits of the case.

11. In the result, the appeal of the assessee is allowed.

The order is pronounced in the open court on 27th October, 2017.

Sd/-
(G.D.AGRAWAL)
HON'BLE PRESIDENT

Amit Kumar

Date:- 27.10.2017

Sd/-
(K.N.CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI