

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA Nos.429 & 430/CTK/2015**  
Assessment Years: 2005-06 & 2006-07

Sambit Resorts Pvt Ltd., Plot No.339(P), Goutam Nagar, BMC Mausima Main Road, Bhubaneswar.	Vs.	ACIT, Circle -1(2), Bhubaneswar.
PAN/GIR No. AAHCS 9285 P		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri G.Naik/S.K.Sarangi, ARs  
Revenue by : Shri Suwendu Dutta, DR

**Date of Hearing : 25/07/ 2017**

**Date of Pronouncement : 27/07/ 2017**

**ORDER**

**Per N.S.Saini, AM**

These are appeals filed by the assessee against the order of CIT(A)—  
1, Bhubaneswar, dated 28.3.2014 for the assessment year 2005-06 and  
dated 21.8.2015 for the assessment year 2006-07.

2. The common ground of appeal raised in these appeals by the  
assessee is that the CIT(A) is not justified in confirming the levy of penalty  
u/s.271(1)(c) of the Act for Rs.5,94,630/- for the assessment year 2005-  
06 and Rs.4,62,830/- for the assessment year 2006-07.

3. At the outset, Id A.R. of the assessee by filing copies of notice issued u/s.271(1)(c) of the Act by the Assessing Officer dated 13.3.2014 in Assessment year 2005-06 and dated 31.12.2009 in Assessment year 2006-07 submitted that the Assessing Officer in the said notices has stated as under:

“have concealed the particulars of your income or furnished “ inaccurate particulars of such income.”

4. Thus, it is not clear from the said notices issued u/s.271(1)(c) of the Act by the Assessing Officer whether the show cause is issued to the assessee for concealment of particulars of income or for furnishing inaccurate particulars of income. He submitted that in similar facts and circumstances of the case, Cuttack Bench of the Tribunal in the case of Shri Niranjana Pati vs ACIT in ITA No.398/CTK/2016 for the assessment year 1999-2000 and others order dated 28.4.2017 has quashed the order levying penalty u/s.271(1)(c) of the Act.

5. Similarly, Hyderabad Benches of the Tribunal in the case of Sri Nilaya AR projects vs ITO in ITA No.1572//Hyd/2013 for the assessment year 2006-07 order dated 4.1.2017 has also quashed the penalty order u/s.271(1)(c) of the Act. Hence, it was his prayer that respectfully following the same penalty orders levying penalty u/s.271(1)(c) of the Act are liable to be quashed.

6. On the other hand, Id D.R relied on the orders of lower authorities.

7. We have heard the rival submissions and perused the orders of lower authorities and materials available on record. In the instant case, a search and seizure operation was conducted in the premises of the assessee on 15.11.2007 and certain books of account and documents were found and seized. From the seized documents, the Assessing Officer found that in assessment year 2005-06, the assessee has made investment of Rs.68,20,000/- for purchase of some landed property. Out of total payment of Rs.68,20,000/-, Rs.33,75,000/- was found to be unexplained in the relevant previous year. Therefore, the Assessing Officer made addition to the income of the assessee u/s.69 of the Act.

8. On appeal, the CIT(A) after considering the evidences on record and the facts of the case, reduced the addition under the head "unexplained investment" to Rs.16,25,000/-.

8.1 Similarly, for the assessment year 2006-07, the Assessing Officer found that the assessee has made investment of Rs.68,20,000/- for purchase of landed property at Ashok Nagar, Bhubaneswar. Out of the total payment of Rs.68,20,000/-, Rs.22,45,000/- invested during the relevant previous year was found to be unexplained. Therefore, the Assessing Officer added the same u/s.69 of the Act. He also made addition of Rs.2 lakhs on account of unexplained cash payment to Smt. Sharmila Mitra as per money receipt seized in the course of search.

9. On appeal, the CIT(A) after considering the evidences on record and facts of the case, reduced addition under the head "unexplained

investment" to Rs.11,75,000/- while confirming Rs.2 lakhs on account of unexplained cash payment.

10. Thereafter, the Assessing Officer levied penalty u/s.271(1)(c) of the Act for Rs.5,94,630/- for assessment year 2005-06 and Rs.4,62,830/- for assessment year 2006-07, which was confirmed in appeal by the CIT(A).

11. In the backdrop of the aforesaid facts and circumstances of the case, the sole question arises for determination in this case is :-

*"as to whether AO has initiated the penalty proceedings by issuing valid notice u/s 274 read with section 271(1)(c) of the Act by specifying as to whether the penalty proceedings are being initiated "for furnishing of inaccurate particular!!; or that for concealment of income."*

12. For ready perusal, the notice issued by the AO u/s 271(l)(c) in both the assessment years is reproduced as under :-

*"Where in the course of proceedings before me for the assessment year 2005-06 & 2006-07 it appears to me that you: -*

*\*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice by U/s.22(l)/22(2)/B4 of the Indian Income Tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given by u/s. 139(2) /148 of the Income Tax Act, 1961. No.\_\_\_\_ dt.\_\_\_\_ or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.*

*\*\* have without reasonable cause failed to comply with a notice u/s. 22(4)/23(2) of the Indian Tax Act, 1922 or under section 142(1) / 143(2) of the Income-tax Act, 1961.*

*\*\*\*have concealed the particulars of your income or furnished in accurate particulars of such income.*

*You are hereby requested to appear before me on 20.3.2014 at 11.00 AM for the assessment year 2005-06 and on 10.2.2010 at 1.00 AM for the assessment year 2006-07 and show cause why an order imposing a penalty on you should not be made u/s 271 of the Income-*

*tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through Authorised Representative, you may show cause in writing on or before the said date which will be considered before any such order is made u/s.271. "*

13. Hon'ble Apex Court vide judgment in case of *M/s. SSA's Emerald Meadows, (2016) 73 taxmann.com 248(SC)* dismissed the Special Leave Petition filed by the Revenue against the judgment rendered by Hon'ble High Court of Karnataka whereby identical issue was decided in favour of the assessee. Operative part of the judgment in case of *M/s. SSA's Emerald Meadows (supra)* decided by Hon'ble High Court of Karnataka is reproduced below :-

"2. This appeal has been filed raising the following substantial questions of law:

*(1) Whether, omission if assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?*

*(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.s. 271(l)(c) is bad in law and invalid in spite of the amendment of Section 271(1 B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?*

*(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued, under Section 274 without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?*

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(l)(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(l)(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 COMMISSIONER or INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565.

4. In our view, since the matter is covered by judgment 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."

14. Bare perusal of the notice issued u/s 271(l)(c) apparently goes to prove that the Assessing Officer initiated the penalty proceedings by issuing the notice u/s 274/271(1)(c) of the Act without specifying whether the assessee has concealed "*particulars of income*" or assessee has furnished "*inaccurate particulars of income*", so as to provide adequate opportunity to the assessee to explain the show cause notice. Rather notice in this case has been issued in a stereotyped manner without applying any mind which is bad in law, hence is not a valid notice sufficient to impose penalty u/s 271(1)(c) of the Act.

15. The penalty provisions of section 271(l)(c) of the Act are attracted where the assessee has concealed the particulars of income or furnished inaccurate particulars of such income. It is also a well-accepted proposition that the aforesaid two limbs of section 271(l)(c) of the Act carry different meanings. Therefore, it was imperative for the Assessing Officer to strike-

off the irrelevant limb so as to make the assessee aware as to what is the charge made against him so that he can respond accordingly. The Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar) observed that the levy of penalty has to be clear as to the limb under which it is being levied. As per Hon'ble High Court, where the Assessing Officer proposed to invoke first limb being concealment, then the notice has to be appropriately marked. The Hon'ble High Court held that the standard proforma of notice under section 274 of the Act without striking of the irrelevant clauses would lead to an inference of non-application of mind by the Assessing Officer. The Hon'ble Supreme Court in the case of Dilip N. Shroff vs. JCIT, 291 ITR 519(SC) has also noticed that where the Assessing Officer issues notice under section 274 of the Act in the standard proforma and the inappropriate words are not deleted, the same would postulate that the Assessing Officer was not sure as to whether he was to proceed on the basis that the assessee had concealed the particulars of his income or furnished inaccurate particulars of income. According to the Hon'ble Supreme Court, in such a situation, levy of penalty suffers from non-application of mind. In the background of the aforesaid legal position and, having regard to the manner in which the Assessing Officer has issued notice under section 274 r.w.s. 271(I)(c) of the Act dated 13.3.2014 and 31.12.2009 for the assessment year 2005-06 and 2006-07, respectively, without striking off the irrelevant words, the penalty proceedings show a non-application of mind by the Assessing Officer and is, thus, unsustainable. We hold so.

16. In the result, both the appeals filed by the assessee are allowed.

Order pronounced on 27 /07/2017.

Sd/-

sd/-

**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

**(N.S Saini)**  
**ACCOUNTANT MEMBER**

Cuttack; Dated 27 /07/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Sambit Resorts Pvt Ltd.,  
Plot No.339(P), Goutam Nagar, BMC  
Mausima Main Road, Bhubaneswar.
2. The Respondent. ACIT, Circle -1(2),  
Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**