



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

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

ITA No.118/CTK/2016
Assessment Year : 2011-12

M/s. Kalinga Mining Corporation (P) Ltd., Shaikh Baxar, Cuttack	Vs.	ACIT, Circle 2(2), Cuttack
PAN/GIR No.AADCK 6771 N		
(Appellant)	..	(Respondent)

Assessee by : Shri P.K.Jesthi, AR
Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 25/10/ 2017
Date of Pronouncement : 25 /10/ 2017

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of the CIT(A)- Cuttack dated 29.1.2016 for the assessment year 2011-12.

2. The sole issue involved in this appeal is that the CIT(A) erred in confirming the action of the Assessing Officer in confirming the levy of penalty u/s.271(1)(c) of the Act of Rs.10,00,000/-.

3. At the outset, Id Authorised Representative of the assessee filed before us copy of notice issued u/s.271(1)(c) of the Act dated 6.3.2014, copy of which is placed on record and pointed out therefrom that in the said notice, the Assessing Officer has stated as under:

"Where in the course of proceedings before me for the assessment year 2011-12, it appears to me that you:-

.....

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



4. He submitted that it is not clear from the said notice 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.

5. He submitted that the Hon'ble Supreme Court in the case of CIT vs. SSA's. Emerald Meadows dated 11th January, 2017 passed in Special Leave to Appeal (CC No.11485/2016)/73 taxmann.com 248 (SC) has held that Omission by the AO to explicitly specify in the penalty notice as to whether penalty proceedings are being initiated for furnishing of inaccurate particulars or for concealment of income makes the penalty order liable for cancellation. 1 Hence, he submitted that penalty of Rs.10,00,000/- imposed by the Assessing Officer u/s.271(1)(c) is, therefore, liable to be cancelled.

6. The Departmental Representative could not controvert the above submission of Id Authorised Representative of the assessee.

7. We have heard the rival submissions perused the orders of lower authorities and materials available on record. We find that the facts in the present appeal are not in dispute and the Assessing Officer in the order passed u/s.271(1)(c) dated 30.9.2014 levied penalty of Rs. Rs.10,00,000/-.

8. 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(I)(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(I)(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(I)(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."

9. Bare perusal of the notice issued u/s 271(I)(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.

10. 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(l)(c) of the Act dated 6.3.2014 without striking off the irrelevant words, the penalty proceedings show a non-application of mind by the Assessing Officer and is, thus, unsustainable.

11. The facts of the present appeal are identical to the facts of the case before the Hon'ble Supreme Court in the case of SSA's. Emarld Meadows(supra) and, therefore, the decision of Hon'ble Supreme Court squarely applies to the case of the assessee. Hence, respectfully following the same, we cancel the order of the Assessing Officer dated 30.9.2014 levying penalty of Rs..10,00,000/- and allow the ground of appeal of the assessee.

12. In the result, appeal filed by the assessee is allowed.



Order pronounced in the open court on 25 /10/2017.

Sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 25 /10/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : M/s. Kalinga Mining Corporation (P) Ltd., Shaikh Baxar, Cuttack
2. The Respondent. ACIT, Circle 2(2), Cuttack
3. The CIT(A)- Cuttack
4. Pr.CIT- Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack