

**IN THE INCOME TAX APPELLATE TRIBUNAL
"J" Bench, Mumbai**

**Before Shri Joginder Singh, Judicial Member
and Shri Rajesh Kumar, Accountant Member**

ITA No.6149/Mum/2017
(Assessment Year: 2011-12)

M/s. Jalan Capitals P. Ltd.
1001 B Wing, Oberoi Equisite
1 Mohan Gokhale Marg
Off W.E. Highway, Behind
Oberoi, Mall, Goregaon (E)
Mumbai 400063

DCIT, Range - 8(2)
Room No. 218, 2nd Floor
Aayakar Bhavan M.K. Road
Vs. Mumbai 400020

PAN – AABCJ4137H

Appellant

Respondent

Appellant by: Ms. Neha Paranjpe
Respondent by: Ms. N. Hemalatha

Date of Hearing: 26.12.2017
Date of Pronouncement: 24.01.2018

ORDER

Per Rajesh Kumar, AM

This appeal has been filed by the assessee against the order of the CIT(A)-17, Mumbai dated 27.07.2017 for A.Y. 2011-12.

2. The assessee has raised the following grounds of appeal: -

“Legal Ground:

- 1. The notice dated 27.02.2014 issued under section 274 r.w.s 271(1)(c) of the Act is bad in law as the same is not specified any particular charge on the basis of which the concealment penalty has been levied. Thus, the notice issued and the subsequent penalty order passed under section 271(1)(c) are void ab initio and the same may be quashed.*

On merit:

- 2. The Ld. CIT (A) erred in upholding the action of the Ld. A.O. in passing the order dated 27.07.2017 under section 271(1)(c) of the Act by levying penalty of Rs.20,50,500/- without appreciating the facts and circumstances of the case. Thus, the levy of penalty amounting to Rs.20,50,500/- under section 271(1)(c) of the Act is not justified and same may be deleted.*

3. *The Ld.CIT (A) failed to appreciate that Appellant has neither concealed any particulars of income nor furnished any inaccurate particulars of income. Thus, the levy of penalty amounting to Rs. 20,50,500/- under section 271(1)(c) of the Act is not at all justified and the same may be deleted.*
4. *The Ld. CIT (A), further, failed to appreciate that the income declared in the revised computation has been accepted by the Ld.A.O. while passing the assessment order. Thus, the levy of penalty of Rs.20,50,500/- under section 271(1)(c) of the Act on the basis suo moto declared income is unjustified and the same may be deleted.*
5. *The Ld. CIT(A) erred in confirming the penalty under section 271(1)(c) of the Act pm account of addition made under Income From Other Sources amounting to Rs.1,03,685/- without appreciating facts and circumstances of the case. Thus, the levy of penalty is unjustified and the same may be deleted.”*

3. The issue raised in ground No. 1 is a legal issue challenging the validity of the penalty order passed under Section 271(1)(c) of the Income Tax Act on the ground that the penalty was initiated for filing inaccurate particulars of income whereas it was finally imposed for concealment of income.

4. The brief facts of the case are that the assessment was framed in this case vide order dated 27.02.2014 passed under Section 143(3) of the Income Tax Act assessing total income at ₹86,52,493/- as against the returned loss of ₹1,83,05,166/-. While framing the assessment the AO initiated penalty proceedings for furnishing of inaccurate particulars of income which reads as under: -

“Penalty proceedings u/s 271(1)(c) of the Act are initiated separately for furnishing inaccurate particulars of income which lead to concealment of particulars of income.”

While passing the penalty order under Section 271(1)(c) of the Act dated 28.08.2014, the AO imposed penalty of ₹20,50,500/- for concealment of income.

5. Though the legal issue of challenging the order imposing penalty under Section 271(1)(c) of the Act was not taken up before the CIT(A) and

being taken for the first time before this Bench, in our opinion the assessee is within its full rights to raise the issue before us. The learned A.R. vehemently submitted before us that the order imposing penalty under Section 271(1)(c) of the Act is bad in law and void ab initio for the reason that the AO himself is not clear as to on which charge penalty was to be levied. The AO initiated the penalty proceedings for filing inaccurate particulars of income whereas the penalty was finally imposed for concealment of income by the assessee. The learned A.R. contended that the order passed by AO deserved to be quashed on this ground only and in defence of his argument the learned A.R. relied on the decision of the Coordinate Bench in the case of Shri Samson Perinchery in ITA Nos. 4625 to 4630/Mum/2013, which has been affirmed by the Hon'ble Bombay High Court vide order dated 05.01.2017. In view of the above facts the learned A.R. submitted that the penalty order be quashed.

6. Per contra, the learned A.R. defending the order of the Authorities below submitted that the penalty proceedings were initiated by stating that penalty proceedings being initiated for furnishing inaccurate particulars of income leading to concealment of income and finally imposed penalty for concealment of income. The learned D.R. submitted that it is immaterial that on which limb penalty was imposed by the AO. It was rightly initiated on both the limbs. The learned D.R. relied on the decision of the Hon'ble Jurisdictional High Court in the case of Mr. Shanti Ramanand Sagar and Others vs. CIT in Income Tax Reference No. 22 of 2000. The learned D.R. finally prayed that since the penalty has been correctly levied the order of the CIT(A) deserves to be affirmed.

7. We heard the rival submissions and perused the material on record. The undisputed facts are that the AO initiated penalty proceedings for furnishing inaccurate particulars of income whereas the penalty was finally imposed for concealment of income. In our considered view the AO has to specifically point out one of the two limbs on which the penalty is proposed to be levied on the assessee so that the assessee can get full natural justice to respond to the charge for which it is penalised but in the

present case this is not so and thus the AO himself was not clear as to which limb penalty was to be imposed. The case of the assessee also gets support from the decision of the Coordinate Bench in the case Samson Perinchery (supra) wherein it has been held that the AO has to specify the charge on which penalty is being imposed failing which the penalty order cannot be sustained. The said order of the Tribunal stands affirmed by the Hon'ble Bombay High Court vide order dated 05.01.2017. The relevant portion of the order of the Hon'ble Bombay High Court is extracted for ready reference: -

“3 The impugned order of the Tribunal deleted the penalty imposed upon the Respondent-Assessee. This by holding that the initiation of penalty under Section 271(1)(c) of the Act by Assessing Officer was for furnishing inaccurate particulars of income while the order imposing penalty is for concealment of income. The impugned order holds that the concealment of income and furnishing inaccurate particulars of income carry different connotations. Therefore, the Assessing Officer should be clear as to which of the two limbs under which penalty is imposable, has been contravened or indicate that both have been contravened while initiating penalty proceedings. It cannot be that the initiation would be only on one limb i.e. for furnishing inaccurate particulars of income while imposition of penalty on the other limb i.e. concealment of income. Further, the Tribunal also noted that notice issued under Section 274 of the Act is in a standard proforma, without having striked out irrelevant clauses therein. This indicates non-application of mind on the part of the Assessing Officer while issuing the penalty notice.

4 The impugned order relied upon the following extract of Karnataka High Court's decision in CIT v/s. Manjunath Cotton and Ginning Factory 359 ITR 565 to delete the penalty: -

“The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are different. Thus, the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it as case of furnishing of inaccurate particulars. The apex court in the case of Ashok Pai reported in [2007] 292 ITR 11 (SC) at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of Manu Engineering reported in 122 ITR 306 and the Delhi High Court in the case of Virgo Marketing P. Ltd., reported in 171 Taxman

156, has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind.”

5 The grievance of the Revenue before us is that there is no difference between furnishing of inaccurate particulars of income and concealment of income. Thus, distinction drawn by the impugned order is between Tweedledum and Tweedledee. In the above view, the deletion of the penalty is unjustified.

6 The above submission on the part of the Revenue is in the face of the decision of the Supreme Court in *Ashok Pai v/s. CIT 292 ITR 11* [relied upon in *Manjunath Cotton & Ginning Factory (supra)*] –wherein it is observed that concealment of income and furnishing of inaccurate particulars of income in Section 271(1)(c) of the Act, carry different meanings/connotations. Therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under Section 271(1)(c) of the Act, for initiation of penalty proceedings will not warrant/ permit penalty being imposed for the other breach. This is more so, as an Assessee would respond to the ground on which the penalty has been initiated/notice issued. It must, therefore, follow that the order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated, and it cannot be on a fresh ground of which the Assessee has no notice.

7 Therefore, the issue herein stands concluded in favour of the Respondent-Assessee by the decision of the Karnataka High Court in the case of *Manjunath Cotton and Ginning Factory (supra)*. Nothing has been shown to us in the present facts which would warrant our taking a view different from the Karnataka High Court in the case of *Manjunath Cotton and Ginning Factory (supra)*.

8 In view of the above, the question as framed do not give rise to any substantial question of law. Thus, not entertained.”

8. The facts of the case of the assessee are squarely covered by the above decision. In the instant case also the AO initiated penalty on one limb but imposed penalty on the other which is wrong and therefore order of CIT(A) cannot be sustained. In view of the ratio laid down by the Hon'ble Bombay High Court as stated hereinabove we are of the view that the case of the assessee is squarely covered by the said decision and we,

respectfully following the same , set aside the order of CIT(A) and direct the AO to delete the penalty.

Order pronounced in the open court on 24th January, 2018.

Sd/-
(Joginder Singh)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Mumbai, Dated: 24th January, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -17, Mumbai*
4. *The CIT - 10, Mumbai*
5. *The DR, "J" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.