

आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH CUTTACK

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.172 to 176/CTK/2017

(निर्धारण वर्ष / Assessment Years :2002-03 to 2006-07)

Harekrushna Panigrahi, Plot No.258/220/2508, Saileshwar Vihar, Bhubaneswar	Vs.	ITO, Ward-3(2), Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AELPP 9469 F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri A.P.Mishra, AR

राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR

सुनवाई की तारीख / Date of Hearing : **29/01/2018**

घोषणा की तारीख/Date of Pronouncement **29/01/2018**

आदेश / O R D E R

These are the appeals filed by the assessee against the order of the CIT(A)-2, Bhubaneswar, all dated 27.02.2017.

2. The sole ground taken by the assessee in all the appeals that the CIT(A) was not justified in confirming the levy of penalty u/s.271(1)(c) of the Act of Rs.68,030/- in the assessment year 2002-03, Rs.41,280/- in the assessment year 2003-04, Rs.29,171/- in the assessment year 2004-05, Rs.6,184/- in the assessment year 2005-06 and Rs.22,380/- in the assessment year 2006-07, respectively.

3. At the outset, Id Authorised Representative of the assessee submitted that in the order passed u/s.271(1)(c) of the Act dated 21.01.2016, the AO in page 2 para 2 of the order has observed as under:-

“Penalty proceedings u/s.271(1)(c) of the IT Act was initiated for concealment of particulars of income and furnishing inaccurate particulars of income.

Further the AO in page 5 at para 1 of the order has observed as under :-

“Therefore, the assessee is in default on the score that he has not solemnized his obligation to disclose fully and truly particulars of income in his return thereby concealing and furnishing inaccurate particulars of his income.”

He further submitted that while levying the penalty finally in the order, the Assessing Officer observed as under :-

“In view of the above facts and circumstances and in the backdrop of concealment and furnishing inaccurate particulars of income on the part of assessee, I deem it proper to impose a minimum penalty u/s.271(1)(c) read with section 274 of the I.T.Act, 1961.”

4. He submitted that the Assessing Officer was not clear as to whether he was levying penalty on the assessee for concealment of particulars of income or furnishing of 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 order 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. Hence, he submitted that penalty of Rs.68,030/-, Rs.41,280/-, Rs.29,171/- , Rs.6,184/- and Rs.22,380/- in the assessment years 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07, respectively imposed by the Assessing Officer u/s.271(1)(c) of the Act are, therefore, liable to be cancelled.

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

7. I have heard the rival submissions perused the orders of lower authorities and materials available on record. I 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) of the Act, dated 21.01.2016 levied penalty of Rs.68,030/-, Rs.41,280/-, Rs.29,171/- , Rs.6,184/- and Rs.22,380/- in the assessment years 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07, respectively.

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(l)(c) is had in law and invalid in spite 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."*

9. The penalty provisions of section 271(1)(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(1)(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 passed the order u/s.271(1)(c) of the Act dated 21.01.2016, the penalty proceedings show a non-application of mind by the Assessing Officer and is, thus, unsustainable.

10. The facts of the present appeals are identical to the facts of the case before the Hon'ble Supreme Court in the case of SSA's. Emerald Meadows(supra) and, therefore, the decision of Hon'ble Supreme Court squarely applies to these cases of the assessee. Hence, respectfully following the same, I cancel the order of the Assessing Officer dated 21.01.2016 levying penalty u/s.271(1)(c) of the Act of Rs.68,030/-, Rs.41,280/-, Rs.29,171/- , Rs.6,184/- and Rs.22,380/- in the assessment years 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07, respectively and allow the ground of appeals of the assessee.

11. In the result, all appeals filed by the assessee are allowed.

Order pronounced in the open court on 29/01/2018.

**Sd/-
(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 29/01/2018

प्र.कु.मि/PKM, Senior Private Secretary

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Harekrushna Panigrahi,
Plot No.258/220/2508,
Saileshwar Vihar,
Bhubaneswar
2. प्रत्यर्थी / The Respondent-
ITO, Ward-3(2), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack