

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 5697/Del/2015
AY: 2010-11**

M/s Hindon River Mills Ltd., P.O. Hindon Nagar, Dasna, Ghaziabad.	vs	DCIT, Circle-1, Ghaziabad.
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(Appellant)

(Respondent)

Appellant by : Shri Sanat Kapoor, Advocate
Ms Ananya Kapoor, Advocate

Respondent by : Shri R.S. Senapati, Sr. DR

Date of Hearing: 15.02.2018

Date of Pronouncement: 27.02.2018

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

This appeal has been preferred by the assessee against the order passed by the Ld. CIT(A), Ghaziabad and it challenges the confirmation of imposition of penalty amounting to Rs. 3,70,865/- imposed under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act")

2. At the outset, the ld. AR submitted that the assessee had field additional grounds of appeal which raise an important legal issue. It was prayed that the additional grounds may be admitted.

3. The Ld. Sr. DR opposed the prayer of the Ld. AR.

4. Having heard the rival contentions and after going through the additional grounds, we are of the considered opinion that these grounds are essentially legal grounds and go to the very root of the matter in respect of the penalty. Therefore, we deem it fit to admit the additional grounds which read as under:-

“3. The notice issued u/s 271 (1) (c) and order imposing penalty under said section are illegal, bad in law, and without jurisdiction.

4. That the Commissioner of Income Tax (Appeals) has failed to appreciate that no satisfaction was recorded before initiation of penalty proceedings u/s 271 (1) (c) and as such the notice issued u/s 271 (1) (c) and the penalty order passed under said section are without jurisdiction and are liable to be quashed.

5. That in view of the facts and circumstance of the case the Commissioner of Income Tax (Appeals) has erred in law and on facts in upholding the penalty imposed u/s 271 (1) (c).

6. That penalty indicated and levied is without any specific charge as to concealment of income or furnishing inaccurate particulars. Penalty levied is illegal and bad in law.

7. That the information filed and the material available on record are not properly considered and as such the order imposing penalty u/s 271 (1) (c) is illegal and bad in law.

8. That the Commissioner of Income Tax (Appeals) has failed to appreciate that the mere disallowances of expenses claimed do not attract penalty u/s 271(1) (c) and the same has been wrongly upheld.

The above grounds are purely legal. The relevant facts are already on record and no new fact is required to be investigated. The above noted grounds go to the root of the matter. It is therefore humbly requested that the same may kindly be admitted and adjudicated in the interest of justice. Reliance is placed on the decision of Hon'ble Supreme Court in the case NTPC 229 ITR 383 (SC)."

5. The ld. AR drew our attention to notice u/s 274 r/w 271(1)(c) of the Act and placed at Annexure 'A' of the assessee's paper book. The Ld. AR submitted that notice dated 28.03.2013 was defective as the Assessing Officer had not specified the charge on which the penalty u/s 271(1)(c) of the Act was sought to be levied. The Ld. AR submitted that the AO had simply dispatched the printed form of notice without crossing out the irrelevant portions. It was further submitted that as per the provisions of section 271(1)(c) there are two limbs under which penalty can be imposed and the Assessing Officer has to necessarily specify under which limb, the penalty is being sought to be imposed i.e. whether for concealment of income or for furnishing inaccurate particulars of income. The Ld. AR further

submitted that since in the notice, both the charges were mentioned and the irrelevant portions were not crossed out, the notice was not as per the requirements of the Act. He relied upon the decisions of various Hon'ble Courts especially on the Hon'ble High Court of Karnataka in the case of CIT vs. Manjunatha Cotton & Ginning Factory reported in (2013) 359 ITR 565 (Kar) which was followed by the Hon'ble Karnataka High Court in the case of CIT vs. SSA's Emerald Meadows reported in (2016) 73 taxmann.com 241 (Kar) where the SLP filed by the Revenue has been dismissed by the Hon'ble Supreme Court.

6. In response, the learned DR appearing on behalf of the Revenue argued that penalty proceedings have been validly initiated in the notice u/s 274 r.w.s. 271 of the Act.

7. We have heard the rival contentions and perused the material on record. It is evident from the notice u/s 274 r.w.s. 271 of the Act dated 28.03.2013 for the impugned year that the Assessing Officer has not specifically specified as to under which limb of Section 271(l)(c) of

the Act, the penalty proceedings had been initiated by him, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Hon'ble High Court of Karnataka in the case of CIT vs. Manjunatha Cotton & Ginning Factory, reported in 359 ITR 565 (Kar) has held as under:

"(p) Notice under section 274 of the Act should specifically state the grounds mentioned in Section 271(l)(c), i.e., whether it is for concealment of income or for furnishing of inaccurate particulars of income.

(q) Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law."

7.1 The above-said judgment of Hon'ble High Court of Karnataka in the case of CIT vs. Manjunatha Cotton & Ginning Factor, reported in 359 ITR 565 (Kar) has been followed by the Hon'ble High Court of Karnataka in the case of Commissioner of Income Tax vs SSA's Emerald Meadows, reported in (2016) 73 taxmann.com 241 (Kar) and the relevant observations of the Hon'ble Karnataka High Court are as under-

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

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?

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 despite the amendment of Section 271 (1B) 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 CIT v. Manjunatha Cotton & Ginning Factory [2013] 359ITR 565/218 Taxman 423/35 taxmann.com 250 (Kar.).

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.

7.2 Further, the SLP filed by the Revenue against the judgment of the Karnataka High Court in the case of Commissioner of Income Tax vs SSA's Emerald Meadows (supra) was dismissed by the Hon'ble Supreme Court of India. Therefore, respectfully following the judgment of the Hon'ble Karnataka High Court as above-mentioned we are of the considered view that the Assessing Officer is required to specify which limb of Section 271 (1)(c) of the Act, the penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. From the perusal of the notice u/s.274 r.w.s. 271 of the Act in the present appeal, it is very much obvious that the Assessing Officer has not specified the same. The notice in fact is in standard *pro forma* without the irrelevant clauses therein being struck off. This indicates non application of mind on the part of the Assessing Officer while issuing the penalty notice. In the circumstances and facts of the case, the penalty proceedings initiated by the Assessing Officer are bad in law and accordingly the

penalty so initiated is directed to be deleted and the order of the learned CIT (A) is set aside.

8. In the final result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 27th FEBRUARY, 2018.

Sd/-

(N.K. SAINI)
ACCOUNTANT MEMBER

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

DT. 27th FEBRUARY, 2018
'GS'

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By Order

Asstt. Registrar