

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 4/Jab/2018

निर्धारण वर्ष/ Assessment Year : 2008-09

Harish Chand Soni, 565, Kotwali Ward Tammarhai, Jabalpur, M.P. PAN : AZVPS 8959 C	Vs	Income Tax Officer, Ward 1 (1), Jabalpur
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Sanjay Mishra, Adv.
Revenue by :		Shri PD Chougule, DR

सुनवाई की तारीख/Date of Hearing : 13/03/2018

घोषणा की तारीख /Date of Pronouncement: 15/03/2018

आदेश/O R D E R

PER MANISH BORAD, ACCOUNTANT MEMBER:-

This appeal of assessee for Assessment Year 2008-09 is directed against the order of the CIT(A)-I, Jabalpur dated 29.11.2017 vide appeal No.J/CIT/A/I/JBP/ITO W-1(1)/JBP/208/2011-12, arising out of order under Section 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), framed on 30.03.2011 by the ITO, Ward 1(1), Jabalpur.

2. Assessee has raised four grounds of appeal, but the grievance revolves around a single issue which relates to penalty of Rs.30,000/- levied by the Assessing Officer under Section 271(1)(c) of the Act and confirmed by the Id. CIT(A) in lower appellate proceedings.

3. Briefly stated facts as culled out from the record are that assessee filed return of income on 21.10.2008 declaring income at Rs.1,18,410/-. Learned Assessing Officer, as per the information available with him, observed that the assessee has deposited cash of Rs.27,45,300/- in the Axis Bank account. This bank account was not disclosed in the regular return of income;

however, during the course of assessment proceedings, the assessee has shown income from business at Rs.1,27,275/- by way of revised computation of income. However, learned Assessing Officer calculated the income under Section 44AF of the Act at Rs.1,37,265/- and assessed the income accordingly. The assessee did not prefer any appeal against the order of the Assessing Officer. Thereafter, learned Assessing Officer initiated penalty proceedings for concealment of income and levied penalty of Rs.30,000/- under Section 271(1)(c) of the Act.

4. Appeal of the assessee before the Id. CIT(A) did not bring any relief to the assessee and the penalty under Section 271(1)(c) of Rs.30,000/- was confirmed by the Id. CIT(A). Now, the assessee is in appeal before the Tribunal.

5. At the outset, learned Counsel for the assessee submitted that in the notice issued for initiating proceedings under Section 271(1)(c) of the Act, learned Assessing Officer has not classified that the proceedings have been initiated for concealing particulars of income or for furnishing inaccurate particulars of income. To these facts, learned Counsel for the assessee referred and relied upon the judgment of the Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton and Ginning Factory, reported in (2013) 359 ITR 565 (Kar). Learned Departmental Representative, on the other hand, supported the orders of the lower authorities.

6. We have heard the rival contentions and perused the record placed before us. The assessee is aggrieved with the penalty imposed under Section 271(1)(c) of the Act at Rs.30,000/-, which has been levied by the Assessing Officer on the assessee for not declaring the income on the

turnover carried out through Axis Bank. Learned Counsel has referred and relied upon the judgment of the Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra), wherein it has been held that if the penalty notice is issued without specifying that it is for furnishing of inaccurate particulars of income or for concealment of particulars of income, such penalty notice is not valid. In the instant appeal also, from perusal of the penalty notice placed on record, we observe that the Assessing Officer is not clear as to which of the two limbs, under which penalty is imposable, has been contraband or indicate that both have been contraband while initiating penalty proceedings. In the penalty notice at page no.2, which says that..... *had concealed part of his income or furnished inaccurate particulars of such income.....* We, therefore, respectfully following the judgment of the Hon'ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra), and, in the given facts and circumstances of the case, are of the view that the legal issue raised by the assessee is squarely covered in its favour by the judgment of Hon'ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra) and, therefore, the impugned penalty of Rs.30,000/- imposed by the Assessing Officer u/s 271(1)(c) of the Act is deleted.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 15th March, 2018 at Jabalpur.

Sd/-

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

**(MANISH BORAD)
ACCOUNTANT MEMBER**

Jabalpur; Dated 15/03/ 2018

Bt

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Jabalpur
6. गार्ड फाइल / Guard file.

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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./ Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Jabalpur