

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.3425/M/2015  
Assessment Year: 2003-04**

M/s. SI Group India Ltd., (Formerly known as M/s. Schenectady Herdilla Ltd.), Plot No.2/1 T.T.C Industrial Area, Thane Belapur Road, Navi Mumbai - 400 703 <b>PAN: AAACH7323L</b>	Vs.	Assistant Commissioner of Income Tax - LTU, 29 <sup>th</sup> Floor, World Trade Centre, Cuffe Parade, Colaba, Mumbai - 400005
(Appellant)		(Respondent)

**Present for:**

Assessee by : Ms. Moksha Mehta, A.R.  
Revenue by : Shri Rajesh Kumar Yadav, D.R.

Date of Hearing : 27.04.2018  
Date of Pronouncement : 29.05.2018

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 23.03.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2003-04.

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

"1.1 On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) - LTU ["the CIT(A)"] erred in upholding the action of the Assistant Commissioner of Income Tax- LTU, Mumbai ("the A.O.") in levying penalty of Rs. 1,09,08,512/- u/s. 271(1)(c) of the Income Tax Act, 1961 ("the Act") on the alleged ground that there was concealment of income and that the Appellant had furnished inaccurate particulars of income by making adjustment of unabsorbed

book losses or unabsorbed depreciation whichever is lower while computing book profits u/s 11 5JB of the Act.

1.2 The CIT(A) erred in confirming the action of the A.O. on the alleged ground that mere disclosure of the claim in the Return/ Computation of income did not absolve the Appellant from concealment of income for the reason of making a deliberate wrong claim of deduction without any cogent and sustainable reason.

1.3 The CIT(A) erred in applying Explanation I to Section 271(l)(c) of the Act on the alleged ground that the Appellant had not been able to prove that the said explanation was bonafide.

1.4 The CIT(A) erred in not appreciating the fact that mere making of the claim, which was not sustainable in law by itself would not amount to furnishing of inaccurate particulars regarding the income of the Appellant inasmuch as when it had disclosed all the details and material facts in the accounts and in the return of income.

1.5 The CIT(A) erred in not appreciating the fact that the Appellant had discharged the onus to prove that there was no concealment of income and that the Appellant had acted bonafidely.

1.6 The Appellant prays that the AO be directed to delete the penalty of Rs. 1,09,08,512/- levied under section 271(1)(c) of the Act.:"

### 3. The assessee has also filed additional grounds of appeal which are reproduced as under:

"3.1 On the facts and circumstances of the case and in law, the AO erred in calculating "amount of tax sought to be evaded" at Rs.1,09,08,512/- by applying normal rates of tax (i.e. 36.75%) instead of Rs. 23,37,539/- by applying rate of tax as specified u/s. 115JB of the Act (i.e. 7.875%), for the purpose of levying penalty u/s. 271(1)(c) of the Act.

3.2. The AO erred in not appreciating the fact that tax was assessed under the provisions of sec. 115JB of the Act and not under the normal provisions of the Act.

3.3. The Appellant prays that the AO be directed to re-compute the penalty by calculating the amount of "tax sought to be evaded" as per the provisions of Sec. 11 5J13 of the Act."

### 4. At the outset, the Ld. Counsel for the assessee raised the legal and technical issue that the penalty proceedings initiated by the AO were invalid as same were initiated without

application of mind by the AO. The Ld. A.R. submitted that the AO has not struck off one of the two limbs on which the penalty was being proposed to be levied i.e. for concealment of income or for furnishing of inaccurate particulars of income. The Ld. A.R. submitted that the AO has initiated the penalty in the assessment order for "furnishing of inaccurate particulars of income", however, in the notice dated 24.12.2008 issued under section 274 read with section 271(1)(c) of the Act the AO has not struck off the irrelevant limb or ticked the relevant limb on which the penalty was being proposed. In the subsequent notice issued under section 271(1)(c) dated 11.01.2012 again the AO has not specified the one of the two charges against the assessee on which the penalty was proposed to be levied. The Ld. A.R. submitted that the AO has again issued notice without application of mind as he has not specified one of the two charges on which penalty was proposed to be levied and therefore the Ld. A.R. prayed before the Bench that the said proceedings are invalid and deserved to be struck down on the sole ground and so is consequent order. The Ld. A.R. relied on the following decisions in support of her argument.

1. CIT v. SSA's Emerald Meadows [2017] 242 Taxman 180 - SC;
2. Meherjee Cassinath Holdings Pvt. Ltd. vs. ACIT [2017] (ITA No. 2555/Mum/2012) - Mum ITAT;
3. Orbit Enterprises vs. ITO (2017) (ITA No.1596-97/Mum/2014) - Mum ITAT
4. Uttam Value Steels Limited vs. ACIT [2017] (ITA No. 3622-3625/M/2016) - Mum ITAT;
5. Jehangir HC Jehangir [2017] (ITA No. 1261/Mum/2011)— Mum ITAT;
6. Dr. Sarita Milind Davare vs. ACIT [2016] (ITA No. 2187/Mum/2014)—Mum ITAT;
7. Wadhwa Estate & Developers India Pvt. Ltd. v. ACIT [2017] (ITA No. 2158/Mum/2016) - Mum ITAT:
8. CIT v. Samson Perinchery [2017] (ITA No. 1154/953/1097/1226 of 2014) - Bom HC

9. CIT v. Manjunatha Cotton and Ginning Factory [2013] 359 ITR 565 - Kar HC
10. Safina Hotels Private Limited v. DCIT [2016] 237 Taxman 702 (Kar HC).

5. The Ld. D.R., on the other hand, relied on the order of authorities below and submitted that the AO has clearly mentioned the charge in the assessment order by stating that the penalty proceedings were initiated for furnishing of inaccurate particulars of income. So far as the non striking off the one of the two limbs is concerned, the Ld. D.R. submitted that it is not necessary to mark the particular limb or specify the charge on which the penalty was to be levied specially when the charge has been specified in the assessment order at the time of initiation of penalty proceedings. The Ld. D.R. heavily relied, in support of his contentions on the decision of Hon'ble Bombay High Court in the case of CIT vs. Smt. Kaushalya (1994) 75 Taxman 549 (Bombay) and Maharaja Garage & Co . Ltd. vs. CIT in ITA No.21 of 2008 dated 22th August ,2017 and prayed that the order of Ld. CIT(A) be upheld accordingly as being well reasoned and as per law.

6. We have heard the rival submissions of both the parties and perused the material on record including the impugned order and decisions cited by both the parties. After perusal of the record, we find that at the time of initiation of penalty proceedings in the assessment order the AO stated the same to be on account of furnishing of inaccurate particulars of income whereas in the notices issued under section 271(1)(c) on two different dates as stated hereinabove, the AO has not struck off one of the two limbs or specified the specific charge on which the penalty was being proposed to be levied. Under

the present circumstances and facts of the case, we are of the view that it is of paramount importance and of great significance that the specification of charge on which penalty was proposed to be levied has to be mandatorily be stated on the notice failing which the failure goes to the roots of the penalty proceedings. Under these circumstances, the penalty proceeding itself is rendered invalid and so is the order passed consequently. The case of the assessee is squarely covered by the decision of Hon'ble Karnataka High Court in the case of CIT vs. SSA'S Emerald Meadows (supra) wherein it has been held that the notice issued under section 274 read with section 271(1)(c) of the Act was bad in law as it did not specify under which limb of section 271(1)(c) penalty proceeding has been initiated i.e. whether for concealment of income or for furnishing of inaccurate particulars of income. The Hon'ble High Court has relied on the decision of Division Bench of Hon'ble Karnataka High Court rendered in the case of CIT vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565. The Hon'ble Supreme Court has also dismissed the SLP filed in the case of CIT vs. SSA'S Emerald Meadows (supra) by observing that there is no merit in the petition and SLP is accordingly dismissed. Whereas the decision relied upon by the Revenue in the case of CIT vs. Smt. Kaushalya (supra) rendered on 14.01.1992 can not be of any help to the revenue as the Hon'ble Bombay High Court itself in the case of Shri Samson Perinchery in ITA No.1154/14 has upheld the decision of the tribunal holding the penalty in such cases to be bad. The case relied upon by the Id DR in the case of Maharaja

Garage & Co Vs CIT (Supra) the same is not applicable to the present case, as the issue arising out of the reference application for consideration of the Hon'ble High Court was whether while granting previous approval of Inspecting Assistant Commissioner of Income Tax as per the provisions of section 271(1)(iii) of the Act whether the assessee was required to be given opportunity of being heard which has been considered by the coordinate bench in the case of Mrs. Indrani Sunil Pillai Vs ACIT ITA No. 1339/Mum/2016 AY 2010-11 dated 19.01.2018. In view of the decisions as discussed above, we are inclined to hold that in absence of non mentioning of the relevant limb or specification of one of the two limb the penalty proceedings are bad and the penalty imposed can not be sustained. Accordingly we direct the AO to delete the penalty.

7. Since we have decided the issue on technical and legal ground, the other grounds raised by the assessee need not to be adjudicated.

8. The appeal of the assessee is allowed.

**Order pronounced in the open court on 29.05.2018.**

**Sd/-**  
**(Joginder Singh)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 29.05.2018.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent

The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.