

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.47/CHNY/2017
निर्धारण वर्ष /Assessment year : 2013-2014.

Shri. N. Ellappan,
No.18, Sivashakthi Nagar,
College Road,
Tirupur 641 602.

Vs. The Income Tax Officer,
Ward 1(1)
Tirupur.

[PAN AAGPE 0554K]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. P.S. Prabhakar, C.A.
प्रत्यर्थी की ओर से /Respondent by : Shri. Shaji Jacob, Addl. CIT.

सुनवाई की तारीख/Date of Hearing : 09-07-2018
घोषणा की तारीख /Date of Pronouncement : 10-07-2018

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:

Assessee in this appeal filed against an order dated 20.03.2017 of Id. Commissioner of Income Tax (Appeals)-3, Chennai, is aggrieved on a levy of penalty u/s.271(1) (c) of the Income Tax Act, 1961, (in short 'the Act').

2. Out of the many grounds raised by the assessee, ground number 8 assails the levy of penalty, and it states that concealing of

income or furnishing of inaccurate particulars was merely a surmise and not satisfactorily proved by the Assessing Officer. This ground is reproduced hereunder:-

" For that the order of the Commissioner of Income Tax (Appeals) failed to appreciate that the levy of penalty was unlawful and incorrect as the basic tenets of the provisions of the Section viz, "concealing" or furnishing of inaccurate particulars have not been conclusively or satisfactorily proved by the Officer but merely surmised upon".

3. In support of the above ground, Id. Counsel for the assessee submitted before us the notice issued by the Id. Assessing Officer u/s.274 r.w.s.271(1) (c) of the Income Tax Act, 1961 (in short "the Act"), which did not specifically state the reason why penalty proceeding were being initiated. Id. Authorised Representative placed reliance on decisions of Co-ordinate Bench in the case of *DCIT vs. R. Elangovan (ITA No.1199/2017) and (CO No.75/CHNY/2017) dated 05.04.2018) and Gwalior Agencies vs. ACTI (ITA Nos.2479 & 2480/CHNY/2017) dated 01.03.2018, in which judgments of Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory, 359 ITR 565 and that of CIT vs. SSA's Emerald Meadows (ITA No.380/2015, dated 23.11.2015) were quoted.*

4. On the other hand, Id DR supporting the orders of the lower authorities submitted that assessee was guilty of both furnishing of

inaccurate particulars as well as concealment of income. As per the Id. Departmental Representative, the assessment order clearly indicated that assessee was guilty of both concealment and furnishing of inaccurate particulars. According to him, the notice u/s.274 r.w.s. 271 of the Act did not suffer any infirmity. Contention of the Id. DR, was that the Id. Assessing Officer had correctly desisted from marking any particular portion of such notice, since assessee was guilty of both the offences. Further as per the Id. Departmental Representative, assessee had appeared before the Id. Assessing Officer and cooperated in the proceedings pursuant to such notice. As per the Id. Departmental Representative, the decision of Co-ordinate Bench in the case of *R. Elangovan (supra)* relied on by the Id. Authorised Representative, could be differentiated since here Id. Assessing Officer had initiated penalty both for concealment of income as well as furnishing of inaccurate particulars of income. According to him, assessment order was clear in that the penalty proceedings were being initiated for both these reasons. Hence, as per the Id. Departmental Representative, there was no question of any vagueness in the notice issued u/s.274 r.w.s. 271 (1) (c) of the Act. Such technical mistake even if there were in the notice, as per the Id. Departmental Representative stood covered by Section 292BB of the Act.

5. We have considered the rival contentions and perused the orders of the authorities below. In our opinion validity of a notice issued under Section 274 r.w.s. 271(1) (c) of the Act goes to the root of the jurisdiction to levy a penalty under Section 271 (1) (c) of the Act and can therefore be called into question at any stage of the appellate proceedings. Such notice is the edifice on which the penalty proceedings are built up. Notice issued to the assessee under these Sections, for impugned assessment year is reproduced hereunder:-

NOTICE UNDER SECTION 271 (1) (c) OF THE INCOME TAX ACT, 1961

GIR/PAN: AAGPE 0554K

*O/o. the Income Tax Officer,
Ward 1(1), Tirupur Range,
No..121, 60 feet road,
Tirupur 641 602.*

Dated: 16.02..2016.

To

*Shri. N. Ellappan,
No.18, Sivashakthi Nagar,
College Road,
Tirupur 641 602.*

Whereas in the course of proceedings before me for the Assessment Year 2013-14, it appears to me that you have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are hereby requested to appear before me at 16.03.2016 at 11.00 and show cause why an order imposing a penalty on you should not be made under section 271 (1) (c) of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such orders is made under section 271 (1) (c)

*(R. KALYANI)
Income Tax Officer,
Ward 1(1),
Tirupur.*

Contention of the Id. DR as well as the view taken by the Id. Commissioner of Income Tax (Appeals) were that assessee was guilty of both concealment of income as well as furnishing of inaccurate particulars of income and this was crystal clear from the assessment order. However, a reading of the above notice clearly show that the word used for linking the two portions is "or "and not" and". An assessee in our opinion has every right to know which alleged default he has to explain. If it is both, it is necessary to mention so, in the notice. Without knowing what is default for which he is being charged, an assessee cannot give explanation. Assessee cannot be fastened with a duty to look into assessment order and dig out which offence he is considered guilty and which he is to explain. Not only the notice has to clearly specify the default, in our opinion, it also has to clearly spell out the nature and specifics of the default he is called upon to explain. In a similar situation Hon'ble Karnataka High Court in the case of *SSA's Emerald Meadows (supra)*, relying on its own judgment in the case of *Manjunatha Cotton and Ginning Factory (supra)* held as under at para 2 to 4 of its judgment.

"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(1)(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(1)(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(1)(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 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”.

In the earlier case of *Manjunatha Cotton and Ginning Factory (supra)*

their lordship had observed as under:-

“Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c) , i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law ;

The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice are offended. On the basis of such proceedings, no penalty could be imposed on the assessee ;) taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law ; penalty proceedings are distinct from the assessment proceedings : though proceedings for imposition of penalty emanate from proceedings of assessment, they are independent and a separate aspect of the proceedings ;

The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the proceedings on the merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared invalid in the penalty proceedings".

View taken by the Hon'ble Karnataka High Court in the above judgment stood indirectly affirmed by the Hon'ble Apex Court, when it dismissed an SLP filed by the Revenue against the judgment in the case of SSA's Emerald Meadows (supra), specifically observing that there was no merits in the petition filed by the Revenue. Coming to Section 292B of the Act, which Id. Departmental Representative say can cure the defect in the notice, what can be cured by the said section is only a mistake, defect or omission. Not spelling out the default on which explanation is sought from the assessee, in our opinion will not be a simple "mistake", "defect" or omission. We are therefore of the opinion, that notice issued u/s.274 r.w.s. 271 of the

Act, reproduced by us at para 4 is not valid. Ex-consequenti, the penalty order for the impugned assessment year is set aside.

6. In the result, the appeal of the assessee is allowed on legal ground.

Order pronounced on Tuesday, the 10th day of July, 2018, at Chennai.

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 10th July, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |