

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “B”, NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No.2257/Del/2017
Assessment Year : 2012-13**

Capital Power Infrastructure Pvt. Ltd., A- 156, Lower Ground Floor, New Friends Colony, New Delhi.	Vs.	ACIT, Circle- 5(2), New Delhi.
PAN : AADCC2365E		
(Appellant)		(Respondent)

Assessee by : Ms. Himani Agrawal, CA
Department by : Shri Vijay Kr. Jiwani, Sr.DR
Date of hearing : 02-08-2018
Date of pronouncement : 29-08-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 30.12.2016 of CIT(A)- 2, New Delhi relating to assessment year 2012-13.

2. Grounds of appeal by the assessee are as under :-

- “1. The Ld. CIT(A) has erred in law as well as in facts by upholding the penalty order dated 25.09.2015 passed by Ld. AO imposing the penalty u/s 271(1)(c) amounting to Rs1,69,497/- of the Income Tax Act, 1961.
2. The Ld. CIT(A) has erred in law as well as in facts by upholding the penalty order dated 25.09.2015 without considering the new insertion in Section 270AA.
3. The Ld. CIT(A) has erred in law as well as in facts by not providing reasonable opportunity if being heard to the assessee. Hence, the penalty levied by the A.O. is unjustified and bad in law.
4. The assessee prays leave to add, alter, amend, modify or delete all or any of the Grounds of appeal on or before the date of hearing of appeal.”

3. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of trading and installation of Infrastructure Project. It filed its return of income on 28.09.2012 declaring total income of Rs.2,45,80,480/-. During the course of assessment proceedings, the Assessing Officer observed from the ledger account of Diwali expenses that the assessee has debited an amount of Rs.5,48,534/- on account of purchase of pure gold (ginni). He asked the assessee to furnish its justification along with business exigency for the same. However, the assessee failed to furnish any reply on this issue and agreed to surrender the same as unexplained expenditure. In view of the above, the Assessing Officer made addition of Rs.5,48,534/- to the total income of the assessee. Subsequently, the Assessing Officer initiated penalty proceedings u/s 271(1)(c). Rejecting the explanation given by the assessee, the Assessing Officer levied penalty of Rs.1,69,497/- u/s 271(1)(c) of the I.T. Act, 1961.

4. In appeal, the ld. CIT(A) confirmed the penalty levied by the Assessing Officer.

5. Aggrieved with such order of the ld. CIT(A), the assessee is in appeal before the Tribunal.

6. The ld. counsel for the assessee, at the outset, referred to the copy of the notice u/s 274 r.w.s. 271 dated 18.03.2015 which is placed at page 15 of the Paper Book. Referring to the assessment order, he submitted that the Assessing Officer in the said order has mentioned that penalty proceedings are being

initiated u/s 271(1)(c) separately for furnishing of inaccurate particulars of income or concealment of income. Referring to the notice, ld. counsel for the assessee submitted that the show cause notice issued u/s 274 r.w.s. 271 did not define the nature of default i.e. whether the penalty is levied for concealment of income or for furnishing of inaccurate particulars of income. Referring to the penalty order, he submitted that the Assessing Officer imposed the penalty u/s 271(1)(c) in this case on the ground that the assessee has concealed his income/ furnished inaccurate particulars of income.

7. Referring to the decision of the Hon'ble Karnataka High Court in the case of CIT vs. M/s SSA'S Emerald Meadows vide ITA No.380 of 2015 order dated 23.11.2015, he submitted that the Hon'ble High Court in the said decision, following the decision in the case of Manjunath Cotton and Ginning Factory reported in 359 ITR 565, has upheld the decision of the Tribunal cancelling the penalty and dismissed the appeal filed by the Revenue on the ground that the notice issued by the Assessing Officer u/s 274 r.w.s. 271 is bad in law since it did not specify under which limb of section 271(1)(c) penalty proceedings have been initiated. He submitted that the SLP filed by the Revenue has been dismissed by the Hon'ble Supreme Court. Referring to various other decisions filed in the Paper Book, he submitted that under identical circumstances various Benches of the Tribunal are cancelling the penalty so levied where the inappropriate words are not struck off from the notice issued u/s 274 r.w.s. 271 of the Act. He accordingly submitted that on this preliminarily ground itself the

order of the Id. CIT(A) sustaining the penalty levied by the Assessing Officer should be set-aside and the penalty should be cancelled.

8. The Id. DR on the other hand while supporting the order of Id. CIT(A) relied on the following decisions :-

- (i) Union of India vs. Dharamendra Textile Processors, 295 ITR 244.
- (ii) R. L. Traders vs. ITO, 2017-TIOL-2583-HC-DEL-IT.
- (iii) CIT vs. Zoom Communication (P.) Ltd., 327 ITR 510.
- (iv) CIT vs. Moser Baer India Ltd., 315 ITR 460.
- (v) CIT vs. Gold Coin Health Food (P.) Ltd., 304 ITR 308.
- (vi) MAK Data P. Ltd. vs. CIT, 358 ITR 593.
- (vii) B.A. Balasubramaniam & Bros. Co. vs. CIT, 236 ITR 977.
- (viii) CIT vs. Gates Foam & Rubber Co., 91 ITR 467.
- (ix) Steel Ingots Ltd. vs. CIT, 296 ITR 228.
- (x) CIT vs. Escorts Finance Ltd., 328 ITR 44.
- (xi) CIT vs. R.M.P. Plasto (P.) Ltd., 313 ITR 397.
- (xii) K.P. Madhusudhanan vs. CIT, 251 ITR 99.
- (xiii) CIT vs. Splendor Construction, 208 taxmann.com 302.

9. He submitted that since the assessee in the instant case could not justify the expenses claimed by it in the Profit & Loss Account and has surrendered the income during the course of assessment proceeding, therefore, the assessee has concealed its particulars of income and furnished inaccurate particulars and, therefore, penalty levied by the Assessing Officer and sustained by the Id. CIT(A) is fully justified.

10. We have considered the rival arguments made by both the sides and perused the material available on record. We find penalty of Rs.1,69,497/- has been levied by the Assessing Officer u/s 271(1)(c) on the ground that the assessee could not justify the business exigency of incurring of the expenditure

of Rs.5,48,534/- on account of Diwali expenses. We find ld. CIT(A) upheld the penalty so levied by the Assessing Officer. We find from page 2 of the assessment order that the Assessing Officer, while initiating the penalty proceedings u/s 271(1)(c), has mentioned as under :-

“For the abovementioned reasons, I am satisfied that the assessee has furnished inaccurate particulars of income/concealed its income by filing inaccurate particulars of income. Therefore, penalty proceedings u/s 271(1)(c) are being initiated separately for furnishing of inaccurate particulars of income/concealment of income.”

11. A perusal of the notice issued u/s 274 r.w.s. 271 dated 18.03.2015 shows that the inappropriate words in the said notice has not been struck off i.e. the notice does not specify under which limb of section 271(1)(c) the penalty proceedings has been initiated i.e. whether for concealment of income or for furnishing of inaccurate particulars. We find the Hon’ble Karnataka High Court in the case of M/s SSA’S Emerald Meadows (supra) has observed as under :-

“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 COMMISSIONER OF 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.”

12. We find the SLP filed by the Revenue has been dismissed by the Hon’ble Apex Court. Further, the various Benches of the Tribunal, following the above

decisions, are cancelling the penalty so levied by the Assessing Officer and confirmed by the Id. CIT(A) on account of non-striking of the inappropriate words from the notice issued u/s 274 r.w.s. 271 of the Act. Since in the instant case, the Assessing Officer has not struck off the inappropriate words in the notices issued u/s 274 r.w.s. 271, therefore, the notice does not specify under which limb of section 271(1)(c) the penalty proceedings has been initiated i.e. whether for concealment of income or for furnishing of inaccurate particulars of income. Therefore, the penalty proceedings become bad in law. We, therefore, set-aside the order of the Id. CIT(A) and direct the Assessing Officer to cancel the penalty so levied. The appeal filed by the assessee is accordingly allowed.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 29th August, 2018.

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 29-08-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi