

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.123/RPR/2018
Assessment Year : 2015-16**

K.V.S. Prakasa Rao, Flat No.524/ Kalpkriti Parisar Avadhपुरi, Ashish Nagar (W), Risali, Bhilai (CG).	Vs.	DCIT, Circle- 1(1), Bhilai (CG).
PAN : AEVPP7626J		
(Appellant)		(Respondent)

**ITA Nos.131 to 133/RPR/2018
Assessment Years : 2012-13 to 2014-15**

Amit Kumar Prakash, 7/C, Russian Complex, Sector- 7, Bhilai Nagar, District: Durg (CG)	Vs.	ITO, Ward- 1(4), Bhilai (CG).
PAN : ASMPP0123F		
(Appellant)		(Respondent)

**ITA Nos.134 & 135/RPR/2018
Assessment Years : 2013-14 & 2014-15**

Shri Kishore Kumar Pritm, Qr. No.26C, 27 Sector-4, Bhilai, District: Durg (CG)	Vs.	ITO, Ward- 1(4), Bhilai (CG).
PAN : AFUPP1382F		
(Appellant)		(Respondent)

ITA Nos.136 & 137/RPR/2018
Assessment Years : 2013-14 & 2014-15

Shri Amalendra Kumar Pandey, Flat No.5/A, Street-8, Sector-10, Bhilai, District: Durg (CG)	Vs.	ITO, Ward 1(4), Bhilai (CG).
PAN : AEWPP2154E		
(Appellant)		(Respondent)

ITA Nos.138 & 139/RPR/2018
Assessment Years : 2013-14 & 2014-15

Shri Raghvendra Taduri, Marigold-07, Chouhan Green Valley, Opposite Chouhan Town, Junwani, Bhilai (CG).	Vs.	ACIT, Circle- 1(1), Bhilai (CG).
PAN : ABGPT3950K		
(Appellant)		(Respondent)

ITA No.140/RPR/2018
Assessment Year : 2012-13

Teegala Hanumath Rao, Plot-3, 4 Ashish Nagar (W), Risali, Bhilai, District: Durg (CG).	Vs.	ITO, Ward- 1(5), Bhilai (CG).
PAN : ACTPR3433K		
(Appellant)		(Respondent)

Assessee by : Shri S. R. Rao, Adv.
Department by : Shri Rituparan Namdeo, DR
Date of hearing : 09-08-2018
Date of pronouncement : 09-08-2018

ORDER**PER R. K. PANDA, AM :**

All the above appeals filed by the respective assessees are directed against the separate orders of the Id. CIT(A)- II, Raipur (CG) relating to respective assessment years mentioned therein. For the sake of convenience, all the above appeals of the respective assessees were heard together and are being disposed of by this common order.

2. Levy of penalty u/s 271(1)(c) of the I.T. Act, 1961 by the Assessing Officer which has been confirmed by the Id. CIT(A) is the only issue raised by the above assessees in their respective grounds of appeal.

3. All the above assessees are employees of SAIL, Bhilai Steel Plant and derive income from salary. In the return of income, all these employees have claimed the perquisites received from the employer as exempt. The Assessing Officer reopened all these cases by issue of notice u/s 148 of the Act. The respective employees offered the entire income and paid the taxes thereon and repaid refunds issued earlier on the basis of the original returns of income. The Assessing Officer thereafter initiated penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961. Rejecting the various explanations given by the respective assessees, the respective Assessing Officers levied penalty u/s 271(1)(c) which

has been upheld by the Id. CIT(A). The amount of penalty for each of the assessees for the relevant assessment years are as under :-

<i>Name of the Assessee</i>	<i>A.Y.</i>	<i>Penalty (Rs.)</i>
<i>Shri KVS Prakasa Rao</i>	<i>2015-16</i>	<i>47,720/-</i>
<i>Shri Amit Kumar Prakash</i>	<i>2012-13</i>	<i>12,750/-</i>
	<i>2013-14</i>	<i>7,000/-</i>
	<i>2014-15</i>	<i>14,200/-</i>
<i>Shri Kishore Kumar Pritam</i>	<i>2013-14</i>	<i>5,200/-</i>
	<i>2014-15</i>	<i>3,500/-</i>
<i>Shri Amlendra Kumar Pandey</i>	<i>2013-14</i>	<i>12,800/-</i>
	<i>2014-15</i>	<i>16,800/-</i>
<i>Shri Raghavendra Tarduri</i>	<i>2013-14</i>	<i>28,890/-</i>
	<i>2014-15</i>	<i>33,160/-</i>
<i>Shri Teegala Hanumant Rao</i>	<i>2012-13</i>	<i>13,700/-</i>

4. The Id. counsel for the assessee, at the outset, referring to the notices issued in each case u/s 274 r.w.s. 271 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. He submitted that the Assessing Officer imposed the penalty u/s 271(1)(c) in each case on the ground that the assessee has concealed his income and furnished inaccurate particulars of income. 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 had 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 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 preliminary ground itself the order of the Id. CIT(A) sustaining the penalty levied by the Assessing Officer should be set-aside and the penalty in each case should be cancelled.

5. The Id. DR on the other hand heavily relied on the order of the Id. CIT(A). He submitted that mere non-striking of the inappropriate words will not invalidate the initiation of penalty proceedings and the provisions of section 292B/292BB will come to rescue of the Department.

6. We have considered the rival arguments made by both the sides and perused the material available on record. A perusal of the notice issued u/s 274 r.w.s. 271 in each case 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 had been initiated i.e. whether for concealment of income or for furnishing of inaccurate particulars of income.

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.”

7. 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 had 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 appeals filed by the assessee are accordingly allowed.

8. In the result, all the appeals filed by the respective assessee are allowed.

Order pronounced in the open Court at the time of hearing itself i.e. on this 09th August, 2018.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

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

Dated: 09-08-2018.

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., Raipur.

By Order

//True Copy//

Sr. Private Secretary
ITAT, Raipur