

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE HON'BLE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2695/Del./2015
(ASSESSMENT YEAR : 2007-08)**

**ITA No.2696/Del./2015
(ASSESSMENT YEAR : 2008-09)**

**ITA No.2697/Del./2015
(ASSESSMENT YEAR : 2009-10)**

**ITA No.2698/Del./2015
(ASSESSMENT YEAR : 2010-11)**

Shri Karan Khurana,
113, Dilkhush Building Chowk,
Tilak Bazar,
Delhi – 110 006.

vs. ITO, Ward 47 (1),
New Delhi.

(PAN : AGDPK4271C)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Suresh Gupta, CA
REVENUE BY : Shri Janardan Dass, Senior DR

Date of Hearing : 10.09.2018

Date of Order : 17.09.2018

ORDER

PER BENCH :

Since common questions of facts and law have been raised in all the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The appellant, Shri Karan Khurana (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned orders all dated 11.03.2015 passed by Ld. CIT (Appeals)-16, New Delhi, affirming the penalty orders all dated 14.08.2014 passed u/s 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'), qua the assessment years 2007-08, 2008-09, 2009-10 and 2010-11 on the identical ground that :-

“The Ld. CIT (A) has erred both in law and on facts in dismissing the appeal and confirming the order of penalty passed by the AO, rejecting the submissions of the appellant on the validity of the order of penalty and on the merits as well.”

2. Briefly stated the facts necessary for adjudication of the identical issue at hand in all the aforesaid appeals are : On the basis of completed assessment u/s 147/143(3) of the Act, penalty proceedings u/s 271(1)(c) of the Act were initiated. Assessing Officer completed assessment on the basis of intimation received vide letter no.Asstt.DIT (Inv.)-Unit-III (2)/EP/2012-13/432 dated 18.12.2012 from the Investigation Wing of the Income-tax Department that the assessee has not disclosed five bank accounts for Income-tax purpose for the years 2007-08, 2008-09, 2009-10 and 2010-11. Pursuant to the notice issued u/s 148, assessee filed return declaring income of Rs.15,58,420/-, Rs.6,66,010/-, Rs.1,01,56,450/- and Rs.1,37,43,790/- on 30.03.2013 for AYs

2007-08, 2008-09, 2009-10 & 2010-11 respectively as against the income shown in the original return at Rs.5,11,592/-, Rs.6,32,903/-, Rs.7,06,637/- & Rs.7,05,834/- filed on 29.07.2006, 31.07.2008, 31.07.2009 & 29.07.2010 for AYs 2007-08, 2008-09, 2009-10 & 2010-11 respectively which was accepted by the AO. AO also directed to initiate the penalty proceedings u/s 271 (1)(c) separately. Declining the contentions raised by the assessee, AO after invoking First Part of Clause (A) of Explanation 1 of section 271 (1)(c) proceeded to impose the penalty of Rs.3,34,980/-, Rs.11,145/-, Rs.31,80,810/- & Rs.43,88,580/- @ 100% on the concealed income of Rs.9,95,180/-, Rs.33,110/-, Rs.94,49,815/- & Rs.1,30,37,960/- for AYs 2007-08, 2008-09, 2009-10 & 2010-11 respectively.

3. Assessee carried the matter by way of appeals before the Id. CIT (A) who has confirmed the penalty by dismissing the appeals filed by the assessee for all the aforesaid years. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, assessment has been reopened in this case on the basis of information received by the AO from the Investigation Wing, It is also not in dispute that in response to the notice issued by the AO u/s 148, assessee filed fresh return of income declaring income in addition to the income already shown in the original return, which was accepted by the AO.

6. In the backdrop of the aforesaid facts and circumstances of the case, order passed by the lower Revenue authorities and arguments addressed by the ld. AR to the parties, the sole question arises for determination in this case is:-

“as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income during assessment proceedings while interpreting the provisions contained u/s 271(1)(c) of the Act?”

7. The ld. AR for the assessee company challenging the impugned order contended inter alia that show-cause notice issued by the AO u/s 274, available at page 1 of the composite paper book filed for all the assessment years, is not a valid notice to initiate the penalty proceedings as the assessee company has not been made aware if it has concealed the particulars of income or has furnished inaccurate particulars of such income and relied upon the decision rendered by the Hon'ble Karnataka High Court in case of ***CIT vs. Manjunatha Cotton and Ginning Factory & Ors. 359 ITR 565***

(*Karn.*), affirmed by Hon'ble Supreme Court; that AO has never recorded his satisfaction as to concealment of particulars of income or furnishing of inaccurate particulars of income by the assessee in the assessment order; that when the additional income declared by the assessee pursuant to the notice issued u/s 148 of the Act has been accepted by the AO, no case of concealment of income is made out; that first part of Clause (A) of Explanation 1 of section 271(1)(c) is not attracted as there is no charge of concealment of income has been leveled by the AO.

8. However, on the other hand, ld. DR for the Revenue to repel the arguments addressed by the ld. AR for the assessee company contended inter alia that the notice issued by the AO u/s 274 of the Act is not standalone document which is based on assessment order; that the notice has been issued in respect of furnishing inaccurate particulars of income and relied upon the order passed by AO as well as ld. CIT (A) and further relied upon the case of *Trimurti Engineering Works – 25 taxmann.com 363*.

9. To proceed further, we would like to reproduce notice issued u/s 271(1)(c) of the Act for ready perusal :-

**“NOTICE UNDER SECTION 274 READ WITH SECTION 271
OF THE INCOME TAX ACT, 1961**

Penalty U/S 271(1)(c)

***Income Tax Officer,
New Delhi.***

Dated : 24.02.2014

To

*Sh. Karna Khurana,
Prop. M/s. Karan Dyes & Chemicals,
Laxmi Tex Precessions,
113, Dilkhush Building,
Chowk Tilak Bazar,
Delhi-6.*

Whereas in the course of proceedings before me for the assessment year 2007-08 it appears to me that you:-

have without reasonable cause failed to comply with a notice section 142 (1)/143(2) of the Income Tax Act, 1961 dated.....

have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5

You are hereby requested to appear before me at 11.00 AM/PM on 24.03.2014 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271(1)(c).

*Sd/-
Assessing Officer
NARENDRA KUMAR PUNIA
Ward 29 (1), New Delhi”*

10. Undisputedly, additions made against the assessee during quantum proceedings have already been confirmed. It is settled principle of law that the penalty cannot be imposed merely on the ground that additions made in the income of the assessee has been confirmed rather to proceed with imposition of penalty u/s 271(1)(c), the AO has to prove that there was concealment of

particulars of income or assessee has furnished inaccurate particulars of such income.

11. Bare perusal of the notice issued to the assessee u/s 271(1)(c) of the Act reproduced above goes to prove that assessee has not been called upon to explain if he has concealed the particulars of income or furnished inaccurate particulars of such income rather both the charges have been mentioned in the printed proforma. Hon'ble Karnataka High Court in case of *CIT vs. Manjunatha Cotton and Ginning Factory & Ors.* (supra) dealt with the identical issue threadbare and came to the following conclusion :-

“63. In the light of what is stated above, what emerges is as under:

- a) Penalty under Section 271(1)(c) is a civil liability.*
- b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.*
- c) Willful concealment is not an essential ingredient for attracting civil liability.*
- d) Existence of conditions stipulated in Section 271(1)(c) is a sine qua non for initiation of penalty proceedings under Section 271.*
- e) The existence of such conditions should be discernible from the Assessment Order or order of the Appellate Authority or Revisional Authority.*
- f) Ever if there is no specific finding regarding the existence of the conditions mentioned in Section 271(1)(c), at least the facts set out in Explanation 1(A)*

& (B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.

g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(l)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1(B).

h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Appeals and the Commissioner.

i) The imposition of penalty is not automatic.

j) Imposition of penalty even if the tax liability is admitted is not automatic.

k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the assessing officer in the assessment order.

l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bonafide, an order imposing penalty could be passed.

m) If the explanation offered, even though not substantiated by the assessee, but is found to be bonafide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.

n) The direction referred to in Explanation IB to Section 271 of the Act should be clear and without any ambiguity.

o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the Assessing Authority.

p) 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

q) Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law.

r) The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.

s) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.

t) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.

u) 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 said proceedings on 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 as invalid in the penalty proceedings."

12. So, following the law laid down by Hon'ble High Court, we are of the considered view that when the assessee has not been specifically made aware of the charges leveled against him as to whether there is a concealment of income or furnishing of inaccurate particulars of income on his part, the penalty u/s 271(1)(c) of the Act is not sustainable. The case law relied upon by the Id. DR are not applicable to the facts and circumstances of this case in the face of the decisions rendered by the Hon'ble High Court in *Manjunatha Cotton and Ginning Factory & Ors.* (supra).

So, we are of the considered view that there is a jurisdictional defect in initiating the penalty proceedings as the notice issued u/s 274 is vague and ambiguous one and as such, the penalty levied by AO and affirmed by the CIT (A) is liable to be quashed on this score only.

13. Furthermore, when we examine the assessment order passed in these cases, it apparently shows that AO has not applied his mind to record satisfaction that if it is a case of concealment of particulars of income or furnishing of inaccurate particulars of income rather vaguely and ambiguously recorded that, “*penalty proceedings u/s 271(1)(c) of the Act have been initiated separately.*” So, at the time of passing the assessment order, AO was not clear enough as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income. Moreover, when the AO has himself accepted the additional income declared by the assessee pursuant to the notice u/s 148 of the Act without any rider, the question of concealment to particulars of income or furnishing of inaccurate particulars of income does not arise.

14. Hon’ble Supreme Court in case cited as ***CIT vs. Suresh Chandra Mittal – 251 ITR 9*** while deciding the identical issue held that, “*when the assessee surrendered additional income by*

way of revised returns after persistent queries by AO once the revised returns have been regularized by Revenue the explanation of the assessee that he has declared additional income to buy peace and to come out of vexed litigation could be treated as bona fide and penalty under s. 271(1)(c) was not leviable.”

15. Furthermore, the AO has based its entire order on first part of clause (A) of Explanation 1 of section 271(1)(c) by relying upon the decision of *Hon’ble Delhi High Court in CIT vs. Mak Data Ltd. – 352 ITR 1.*

16. Undisputedly, the AO has imposed penalty on the assessee for furnishing “inaccurate particulars of income” which fact is not discernible from the notice issued u/s 274 of the Act itself nor it is discernible from the assessment order at the time of recording satisfaction by the AO. When we peruse the *Mak Data Ltd.* (supra) case it is based upon the fact that the penalty was levied for concealment of particulars of income, whereas, in the instant case, the penalty has been imposed for “furnishing of inaccurate particulars of income”, which cannot be the case in case of the assessee. Because pursuant to the notice issued u/s 148 of the Act, the assessee filed revised return declaring additional income which was accepted by the AO without any further investigation. In these circumstances, the first part of Clause (A) of Explanation 1

of section 271(1)(c) is not attracted as observed by the AO as well as ld. CIT (A).

17. In view of what has been discussed above, we are of the considered view that AO/CIT (A) have erred in levying/confirming the penalty of Rs.3,34,980/-, Rs.11,145/-, Rs.31,80,810/- & Rs.43,88,580/- for AYs 2007-08, 2008-09, 2009-10 & 2010-11 respectively, which is not sustainable in the eyes of law, hence ordered to be deleted. Consequently, the appeals filed by the assessee are hereby allowed.

Order pronounced in open court on this 17th day of September, 2018.

**Sd/-
(G.D. AGRAWAL)
PRESIDENT**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 17th day of September, 2018

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-19, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**