

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 2252/Bang/2018
Assessment Year : 2013-14

M/s. Turbotech Precision Engineering Pvt. Ltd., Survey No. 8/2, Honnasandra Village, Kasaba Hobli Nelamangala Taluk, Bangalore – 562 123. PAN: AA ACT6674J	Vs.	The Deputy Commissioner of Income Tax, Circle – 7 (1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Lokesh Jain, CA
Revenue by	:	Smt. Sri Nandini Das, JCIT (DR)

Date of hearing	:	27.09.2018
Date of Pronouncement	:	12.10.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-7, Bangalore dated 20.06.2018 for Assessment Year 2013-14.

2. The grounds raised by the assessee are as under.

“1. The order of the Ld. Commissioner of Income Tax (Appeals) (“CIT(A)”) is opposed to law, facts and circumstances of the case.

2. The order is passed in haste, without providing sufficient and reasonable opportunity of being heard.

3. The order is passed against the principle of natural justice and thus liable to be quashed.

4. On the facts and circumstances of the case and in law, CIT(A) erred in confirming the action of AO of imposing penalty of Rs. 6,44,026/- u/s 271(1)(C) of the Income Tax Act, 1961.

5. *On the facts and circumstances of the case and in law, the penalty of Rs. 6,44,026/-levied by the Ld. AO and confirmed by CIT(A) is not sustainable and is liable to be cancelled/deleted.*

6. *The Ld. AO has initiated the penalty proceedings under section 271(1) (c) of the Act for furnishing inaccurate particulars of income, issued Notice u/s. 274 r.w.s. 271 of the Act stating that the appellant have concealed the particulars of income or furnished inaccurate particulars of such income and concluded by levying the penalty on Rs. 20,84,229/- stating concealment of income.*

7. *The Ld. AO has completed the Assessment in an arbitrary manner and has nowhere in his Assessment Order provided his satisfaction regarding the furnishing of inaccurate particulars by the Appellant and has thereby failed to prove the Appellant guilty of concealment or furnishing of incorrect particulars of income.*

8. *Further, the Ld. AO has grossly erred in disallowing the interest expenditure of Rs. 20,84,229/- and in invoking the provisions of section 36(1)(iii) under the claim that the borrowed funds were advanced by the Appellant to its wholly owned subsidiaries as the interest free funds.*

9. *The Ld. AO has failed to appreciate the fact that the borrowed funds were directed towards wholly owned subsidiaries of the Appellant as a measure of commercial expediency.*

The Appellant seeks your leave to add, alter, amend or delete any of the grounds urged at the time of hearing.”

3. At the very outset, it was submitted by ld. AR of assessee that the notice issued by the AO u/s. 274 r.w.s. 271 of IT Act on 07.03.2016 is available on page no. 1 of the paper book filed by the assessee and he pointed out that as per this notice, the AO has not made it clear as to whether the allegation of the AO is regarding concealment of income or furnishing of inaccurate particulars of income. He placed reliance on the judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton & Ginning Factory as reported in 359 ITR 565 (Karnataka) in support of his contention that where the notice issued by the AO for levy of penalty does not specify the allegation, penalty order is bad in law and the same cannot be sustained. He also placed reliance on another judgement of Hon'ble Karnataka High Court rendered in the case of CIT Vs. SSA's Emerald Meadows in ITA No. 380 of 2015 dated 23.11.2015 copy available on pages 108 to 111 of paper book. He pointed out that in this case also, Hon'ble Karnataka High Court decided similar issue on

same line as in the case of CIT vs. Manjunatha Cotton & Ginning Factory (supra). He also submitted that against this judgement of Hon'ble Karnataka High Court, revenue filed SLP before Hon'ble Apex Court and as per the judgment dated 05.08.2016 available on page no. 107 of paper book, the said SLP filed by the revenue was dismissed by Hon'ble Apex Court.

4. As against this, Id. DR of revenue supported the orders of authorities below. He also submitted that in para no. 16 on page no. 6 of the penalty order, the AO has made it clear that he has imposed penalty u/s. 271(1) (c) of IT Act for concealment of income and for furnishing inaccurate particulars of income. The Id. DR of revenue also submitted that copy of assessment order for present year is available on pages 5 to 24 of paper book filed by the assessee and in particular, our attention was drawn to page no. 10 of the assessment order available on page no. 23 of paper book and it was pointed out that the AO has made it clear that penalty u/s. 271 (1)(c) of IT Act is initiated for furnishing inaccurate particulars of income. She submitted that in view of this categorical finding of AO in the assessment order which was passed on the same date i.e. 07.03.2016 on which notice u/s. 274 r.w.s. 271 was issued by him, it cannot be said that the notice issued by AO is bad in law and penalty is not sustainable. She placed reliance on a judgment of Hon'ble Allahabad High Court rendered in the case of U.P. Matsya Vikas Nigam Ltd. Vs. CIT as reported in [2014] 41 taxmann.com 447 (Allahabad) in support of the merit of the penalty imposed by the AO in the present case.
5. In the rejoinder, it was submitted by Id. AR of assessee that even as per penalty order passed by the AO in para no. 14 of the same, the AO has not made it clear as to whether he is imposing penalty for concealment of income or for furnishing of inaccurate particulars of income because the words used by the AO are "the assessee company has concealed its particulars of income / has furnished inaccurate particulars of income". He also placed reliance on a Tribunal order rendered in the case of HPCL Mittal Energy Ltd. Vs. Addl. CIT in ITA Nos. 554 & 555/Asr/2014 dated 07.05.2018. He submitted a copy of this Tribunal order and drawn our attention to para 25 of this Tribunal order and pointed out that in that case also, this was the contention of Id. DR of revenue was this that use of a particular grammatical sign '/' is not determinative of the

charge and it cannot invalidate penalty proceedings. He pointed out that in spite of considering this arguments of Id. DR of revenue, Hon'ble Third Member of the tribunal in that case has held in subsequent paras i.e. 26 and 27 of this Tribunal order that the defaults in the penalty notices / orders are so fundamental that they cannot be construed as elementary or basic mistakes etc. so as to leave them in substance and effect in conformity with the intent and purpose of the Act and section 292B cannot be invoked and it was held that the levy of penalty is not sustainable.

6. We have considered the rival submissions. We find that the issue in dispute is squarely covered against the revenue and in favour of the assessee by the judgement of Hon'ble Karnataka High Court rendered in the case of CIT vs. Manjunatha Cotton & Ginning Factory (supra). The conclusion of this judgement are summarized by Hon'ble Karnataka High Court in para 63 of this judgment and hence, for the sake of ready reference, this Para is reproduced from this judgement available on pages 135 to 137 of paper book.

“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) Even 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(1)(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 1B 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.”

7. From the above conclusion of Hon'ble Karnataka High Court, it is seen that it was held in this case that notice u/s. 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 and it was also held that sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law. It was also held by Hon'ble Karnataka High Court in this case that the assessee should know the grounds which he has to meet specifically and otherwise, principles of natural justice is offended and on the basis of such proceedings, no penalty could be imposed to the assessee. Hence it is seen that in the facts of present case and as per the judgement of Hon'ble Karnataka High Court, penalty order passed in the present case is bad in law because not only in the penalty notice but in penalty order also, the AO is not clear whether the allegation is regarding concealment of income or furnishing of inaccurate particulars of income. For ready reference, we reproduce Para 14 of penalty order which is as under.

“14. In view of the discussion held above, and, in the light of the various judgments pronounced by the judicial bodies mentioned supra, it is held that the assessee company has concealed its particulars of income / has furnished inaccurate particulars of income. Therefore, it is liable for penalty u/s. 271(1)(c) of the I.T. Act, 1961. Hence, I am satisfied that this is a fit case for levy of penalty u/s. 271(1)(c) of the I.T. Act, 1961.”

8. The judgment of Hon'ble Allahabad High Court cited by Id. DR of revenue has no relevance in respect of defects in the penalty notice in the present case and therefore, on this issue, this judgment has no applicability. Even if it is found applicable, we are bound to follow the judgment of Hon'ble Karnataka High Court. No contrary judgment of Hon'ble apex court or of Hon'ble Karnataka High Court on this issue has been cited before us by Id. DR of revenue and hence, by respectfully following this judgement of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton & Ginning Factory (supra), we quash the penalty order passed by the AO because the same is not as per law in view of this fact that the allegation of the AO in the penalty notice and penalty order is not clear as to whether the allegation is regarding concealment of income or furnishing of inaccurate particulars of income.

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

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 12th October, 2018.
/MS/

Copy to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.