

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1088/M/2017
Assessment Year: 2009-10**

M/s. Lakshamshi J. Gala (HUF), Haroon House, 1 st Floor, 294 Perin Nariman Street, Fort, Mumbai - 400 001 PAN: AAAHL 0065N	Vs.	ACIT 18(2), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Mani Jain, A.R.
Revenue by : Shri Anoop Hiwase, D.R.

Date of Hearing : 23.08.2018
Date of Pronouncement : 28.09.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 08.09.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The only issue raised by the assessee in the grounds of appeal is against the confirmation of penalty of Rs.66,93,970/- by the Ld. CIT(A) as made by the AO under section 271(1)(c) of the Act.

3. The assessee has also filed the additional grounds raising the technical issue which is reproduced as under:

“1. On the facts and circumstances of the case and in Law, the notice issued under section 274 read with section 271(1)(c) of the Income-tax Act, 1961 by the Ld. Assessing Officer (AO), is without recording satisfaction and charge for initiating penalty proceedings and is bad in law and the consequential penalty order passed under section 271(1)(c) of the Act is bad in law and not sustainable in the eyes of law.”

4. We would like to deal with the technical issue raised by the assessee in the additional ground first of all.

5. The Ld. A.R. submitted before us that the legal issue being raised is emanating from the notice issued under section 274 read with section 271 of the Act and therefore is coming out of the records before the authorities below and the same should be admitted. In defence of his arguments, the Ld. A.R. relied on the decision of Apex Court and Bombay high court in the cases namely;

1. National Thermal Power Company Ltd. vs. CIT 229 ITR 383 (SC)
2. CIT vs. Pruthvi Brokers and Shareholders Pvt. Ltd. (2012) 349 ITR 336 (Bom.) and
3. Jute Corporation India vs. CIT (1991) 187 (ITR) 688.

6. The Ld. D.R., on the other hand, opposed the admission of additional ground on the technical issue by submitting that such issue was never raised by the assessee before the authorities below.

7. After hearing both the parties and perusing the material on record, we are of the view that the issue raised of non striking off the one of the two limbs which is not relevant is an issue coming from the assessment records which was before

the authorities below and therefore the same is being admitted for adjudication in view of the decisions in the case of National Thermal Power Company Ltd. vs. CIT 229 ITR 383 (SC), CIT vs. Pruthvi Brokers and Shareholders Pvt. Ltd. (2012) 349 ITR 336 (Bom.) and Jute Corporation India vs. CIT (1991) 187 (ITR) 688.

8. After hearing both the parties and perusing the material on record including the notice issued under section 274 read with section 271 of the Act, we observe that while issuing the notice, the AO has not struck off one of the two limbs which is not relevant or on which the penalty was not being proposed. A perusal of notice shows that the same has been issued in a standard format without application of mind. In other words, it is not mentioned in the notice whether the penalty is being proposed to be levied for concealment of particulars of income or for furnishing of inaccurate particulars of income. In the case of CIT vs. Manjunatha Cotton and Ginning Factory and Others 359 ITR 565 the Hon'ble Karnataka High Court has held that the AO has to specify the specific charge on which the penalty is proposed to be levied and non mentioning of specific charge or issuing the notice in a standard format would render the entire proceeding as invalid and bad in law. Even the Special Leave Petition filed by the Revenue before the Hon'ble Supreme Court was dismissed by the Apex Court in SLP No.1398 of 2014 dated 11.07.2016. Likewise in the case of CIT vs. SSA's Emerald Meadows in ITA No.380 of 2015 dated 23.11.2016 a similar issue was decided in favour of the assessee. The SLP filed by the Revenue in the Apex Court was

also dismissed by the Apex Court. The Hon'ble Bombay High Court in the case of CIT vs. Samson Perinchery in ITA No.1154 of 2014 and others dated 05.01.2017 held the similar issue in favour of the assessee. Since the facts of the case of the assessee are identical, we, therefore, following the ratio laid down by the various judicial firms as stated above , set aside the order of Ld. CIT(A) and direct the AO to delete the penalty on the ground that the specific limb on which the penalty was proposed to be levied was not mentioned in the notice.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 28.09.2018.

**Sd/-
(C.N. Prasad)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 28.09.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.