



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RANCHI BENCH, RANCHI**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.284 /Ran/2016
Assessment Year: 2013-14

Sri Saurabh Tiwary, Bunglow No.9999/287, Vijaya Garden, 5 th Phase, Baridih, Jamshedpur	Vs.	ACIT, Circle-3, Jamshedpur
PAN/GIR No.AGFPT 6115 J		
(Appellant)	..	(Respondent)

Assessee by : Shri Devasis Sanigrahi, CA
Revenue by : Shri A.K.Mohanty, JCIT

Date of Hearing : 27/11/ 2018
Date of Pronouncement : 28/11/ 2018

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of the CIT(A)-Jamshedpur dated 14.8.2017 for the assessment year 2013-14.

2. The sole issue involved in these appeals is that the CIT(A) erred in confirming the penalty of ₹2,25,165/- levied u/s.271(1)(c) of the Act by the Assessing Officer.

3. At the outset, Id A.R. of the assessee referred to page 2 of the CIT(A)'s order and submitted that since the assessee failed to comply with the notice dated 29.1.2016 issued u/s.271(1)(c) of the Act before the Assessing Officer, the Assessing Officer levied penalty under section 271(1)(c) of the Act. He also referred to the content of the penalty notice and submitted that the Assessing Officer in the said notice has stated as under:

“ it appears that you have concealed the particulars of your income or furnished inaccurate particulars of such income.”

4. Thus, it is not clear from the said notice issued u/s.271(1)(c) of the Act by the Assessing Officer whether the show cause is issued to the assessee for concealment of particulars of income or for furnishing inaccurate particulars of income.

5. On the other hand, Id D.R relied on the orders of lower authorities.

6. We have heard the rival submissions and perused the orders of lower authorities and materials available on record. The contents of the notice issued by the AO u/s 271(1)(c) for the assessment year 2013-14 is as under :-

".. It appears that you have concealed the particulars of your income or furnished in accurate particulars of such income.

You are hereby requested to appear before me on 4.3.2016 at 11.30 AM on and show cause why an order imposing a penalty on you should not be made u/s 271(1)(c) of the Income-tax Act, 1961. If no one attends this office on the said date of hearing the case shall be decided on the basis of material available on records."

7. Hon'ble Apex Court vide judgment in case of *M/s. SSA's Emerald Meadows, (2016) 73 taxmann.com 248(SC)* dismissed the Special Leave Petition filed by the Revenue against the judgment rendered by Hon'ble High Court of Karnataka whereby identical issue was decided in favour of the assessee. Operative part of the judgment in case of *M/s. SSA's Emerald Meadows (supra)* decided by Hon'ble High Court of Karnataka is reproduced below :-

"2. This appeal has been filed raising the following substantial questions of law:

(1) Whether, omission of assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.s. 271(1)(c) is valid in law and not invalid in spite of the amendment of Section 271(1 B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued, under Section 274 without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?

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(l)(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(l)(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 or 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."

8. Bare perusal of the notice issued u/s 271(1)(c) apparently goes to prove that the Assessing Officer initiated the penalty proceedings by issuing the notice u/s 271 r.w.s 271(1)(c) of the Act without specifying whether the assessee has concealed "*particulars of income*" or *assessee has furnished "inaccurate particulars of income"*, so as to provide adequate opportunity to the assessee to explain the show cause notice. Rather notice in this case has been issued in a stereotyped manner without applying any mind which is bad in law, hence is not a valid notice sufficient to impose penalty u/s 271(1)(c) of the Act.

9. The penalty provisions of section 271(1)(c) of the Act are attracted where the assessee has concealed the particulars of income or furnished inaccurate particulars of such income. It is also a well-accepted proposition that the aforesaid two limbs of section 271(1)(c) of the Act carry different meanings. Therefore, it was imperative for the Assessing Officer to strike-off the irrelevant limb so as to make the assessee aware as to what is the charge made against him so that he can respond accordingly. The Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar) observed that the levy of penalty has to be clear as to the limb under which it is being levied. As per Hon'ble High Court, where the Assessing Officer proposed to invoke first limb being concealment, then the notice has to be appropriately marked. The Hon'ble High Court held that the standard proforma of notice under section 274 of the Act without striking of the irrelevant clauses would lead to an inference of non-application of mind by the Assessing Officer. The Hon'ble Supreme Court in the case of Dilip N. Shroff vs. JCIT, 291 ITR 519(SC) has also noticed that where the Assessing Officer issues notice under section 274 of the Act in the standard proforma and the inappropriate words are not deleted, the same would postulate that the Assessing Officer was not sure as to

whether he was to proceed on the basis that the assessee had concealed the particulars of his income or furnished inaccurate particulars of income. According to the Hon'ble Supreme Court, in such a situation, levy of penalty suffers from non-application of mind. In the background of the aforesaid legal position and, having regard to the manner in which the Assessing Officer has issued notice under section 274 r.w.s. 271(1)(c) of the Act dated 29.1.2016 for the assessment year 2013-14, without striking off the irrelevant words, the penalty proceedings show a non-application of mind by the Assessing Officer and is, thus, unsustainable. We hold so.

10. Therefore, in our considered view, the CIT(A) is not justified in confirming the penalty of Rs.2,25,165/- for the assessment year 2013-14 and, therefore, we delete the same and allow the grounds of appeal of the assessee.

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

Order pronounced on 28/11/2018

Sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Ranchi; Dated 28 /11/2018
B.K.Parida, SPS

sd/-

(N.S Saini)
ACCOUNTANT MEMBER



Copy of the Order forwarded to :

1. The Appellant : Sri Saurabh Tiwary, Bunglow
No.9999/287, Vijaya Garden, 5th Phase,
Baridih, Jamshedpur
2. The Respondent. ACIT, Circle-3, Jamshedpur
3. The CIT(A)- Jamshedpur
4. Pr.CIT- Jamshedpur
5. DR, ITAT, Ranchi
6. Guard file.
//True Copy//

By order

**Sr. Pvt. Secretary,
ITAT, Ranchi on
tour**