

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER
&
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.-3727/Del/2017
(Assessment Year: 2005-06)**

Tefal India Household Appliances Pvt. Ltd. A-25, 1 st Floor, Rear Tower, Mohan Cooperative Industrial Estate, Mathura Road New Delhi PAN : AA ACT2568D	vs	ACIT Circle-16(1) New Delhi
Assessee by		Shri Pradip Dinodia, CA, Sh. R.K. Kapoor, CA
Revenue by		Shri Shailesh Kumar, Sr. DR

Date of Hearing	12.12.2018
Date of Pronouncement	17.12.2018

ORDER

PER N.S.SAINI, ACCOUNTANT MEMBER :

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals)-9, New Delhi dated 06.03.2017 for assessment year 2005-06.

2. The sole issue involved in this appeal is that the CIT(A) erred in confirming the levy of penalty of Rs. 32,88,663/- u/s

271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

3. The brief facts of the case are that the Assessing Officer observed that while making the assessment for the assessment year under appeal by disallowing the expenses of Rs. 69,74,864/- out of total expenses of Rs. 70,08,764/-. Further disallowance was made of Rs. 7,67,758/- under the head "warranty provisions". Further addition of Rs. 12,44,642/- was made under the head "sundry creditors". The Assessing Officer observed that he was of the opinion that in view of the aforesaid undisputed disallowances / additions there is sufficient material on record to prove that assessee has concealed the particulars of his income and has also furnished inaccurate particulars thereof. Therefore, he levied penalty u/s 271(1)(c) of the Act of Rs. 32,88,663/- being hundred percent of the tax sought to be evaded.

4. On appeal the CIT(A) confirmed the action of the AO on the ground that during the year under consideration, the assessee had not carried out any business activity and had claimed expenditure on account of business. The assessee failed to furnish any details before the Assessing Officer and also before him during the appeal proceedings.

5. Before us the Ld. Authorised Representative **Shri Pradip Dinodia, CA, Sh. R.K. Kapoor, CA** argued that in the penalty order, The Assessing Officer in para 4 at page 3 of the order has stated as under :-

“The assessee has concealed the particulars of his income and has also furnished inaccurate particulars thereof.”

He submitted that the Hon’ble Karnataka High Court in the case of VeerbhadrappaSangappa & Co. & Others (2013) 359 ITR 565 (Karn) has held that the show cause notice u/s 274 of the Act does not specify as to the exact charge viz., whether the charge is that the Assessee has “furnished inaccurate particulars of income” or “concealed particulars of income” by striking out the irrelevant portion of printed show cause notice, then the imposition of penalty on the basis of such invalid show cause notice cannot be sustained.

The above ruling has also been relied by Kolkata ITAT in case of Sufaprasanna Bhattacharya vs. ACIT [ITA no. 1303/Kol/2010].

Recently Hon’ble SC in case of **VeerbhadrapaSangappa& Co. [TS-381-SC-2016]** dismissed the revenue SLP against Karnataka HC Judgement on law of penalty.

6. He submitted that in the case of the assessee, the Assessing Officer in the penalty order has held that the assessee has concealed the particulars of his income and has also furnished inaccurate particulars thereof for levy penalty u/s 271(1)(c) of the Act. Therefore, in view of the revision of the Hon’ble Karnataka High Court in the case of VeerbhadrappaSangappa & Co. & Ors. (Supra) the penalty levied is liable to be deleted.

7. The Departmental Representative could not controvert the above submission of Id Authorised Representative of the assessee.

8. We have heard the rival submissions perused the orders of lower authorities and materials available on record. We find that the facts in the present appeal are not in dispute and the Assessing Officer in the order passed u/s.271(1)(c) dated 25.3.2008 levied penalty of Rs.Rs.32,88,663/-.

9. 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 if 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 bad in law and invalid inspite 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(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 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."

10. 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 274/271(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.

11. 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 15.1.2014 without striking off the irrelevant words, the penalty proceedings show anon-application of mind by the Assessing Officer and is, thus, unsustainable.

12. The facts of the present appeal are identical to the facts of the case before the Hon'ble Karnataka High Court in the case of SSA's. Emarld Meadows (supra). In the instant case the AO while levying penalty u/s 271(1)(c) has observed that the assessee has concealed the particulars of his income and has also furnished inaccurate particulars thereof. Thus, he is not specific as to whether the penalty is levied for concealment of income or for furnishing inaccurate particulars of income. Hence, respectfully following the quoted decision of Hon'ble Karnataka High Court, we cancel the order of the Assessing Officer dated 25.3.2008 levying penalty of Rs..32,88,663/- and allow the ground of appeal of the assessee.

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

**Order pronounced in the Court on 17th December, 2018 at
New Delhi.**

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

**Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER**

Dated: 17.12.2018
BR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	12.12.2018
Date on which the typed draft is placed before the dictating Member	12.12.2018
Date on which the typed draft is placed before the Other Member	13.12.2018
Date on which the approved draft comes to the Sr. PS/PS	17.12.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	17.12.2018
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	