

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

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5235/Del./2016  
(ASSESSMENT YEAR : 2005-06)**

**ITA No.5236/Del./2016  
(ASSESSMENT YEAR : 2006-07)**

Crew BOS Products Ltd.,  
37, Sector 4, IMT Manesar,  
Gurgaon.

vs. DCIT, Central Circle 1,  
Faridabad.

**(PAN : AAACC3222F)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri K. Sampath, Advocate  
REVENUE BY : Ms. Ashima Beg, Senior DR

Date of Hearing : 18.12.2018

Date of Order : 19.12.2018

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

The appellant, Crew BOS Products Ltd. (hereinafter referred to as 'the assessee') by filing the present appeals, sought to set aside the impugned orders both dated 29.07.2016 passed by Ld. CIT (Appeals)-3, Gurgaon qua the Assessment Years 2005-06 & 2006-07 confirming the penalties levied u/s 271(1)(c) of the

Income-tax Act, 1961 (for short 'the Act') on the identical grounds inter alia that :-

*“1. That the order of the learned Commissioner of Income Tax (Appeals) bad both on law and facts.*

*2. That the appellant has not been afforded, enough opportunity, of being heard.*

*3. That the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the learned assessing officer in initiating and levying penalty under section 271(1)(c) of the Act despite the fact that the appellant has neither concealed any particular of income nor filed inaccurate particulars of its income.*

*4. That the learned Commissioner of Income Tax (Appeals) confirmed the order of the assessing officer, in a mechanical manner without appreciating and thus independently adjudicating the basis for levy of penalty u/s 271(1)(c) of the Act, in complete disregard of settled principle of law.”*

2. Briefly stated the facts necessary for adjudication of the controversy in both the aforesaid identical appeals at hand are : on the basis of completed assessment under section 143 (3)/153A assessing the income of the assessee at Rs.1,33,34,120/- and Rs.1,27,77,850/- by making addition of Rs.57,88,881/- & Rs.1,15,10,832/- for AYs 2005-06 and 2006-07 respectively, out of which addition of Rs.53,80,723/- and Rs.60,85,154/- for AYs 2005-06 and 2006-07 respectively was confirmed and penalty proceedings were initiated. Declining the contentions raised by assessee, AO proceeded to levy the penalty of Rs.20,93,773/- and

Rs.21,31,076/- @ 100% for AYs 2005-06 and 2006-07 respectively.

3. Assessee carried the matter by way of appeals before the Id. CIT (A) who has confirmed the penalties by dismissing the appeals. 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, the assessee has accepted the addition made by the AO and partly confirmed by Id. CIT (A) as well as by the Tribunal. It is also not in dispute that initially assessment was completed u/s 143 (3) of the Act and thereafter on the basis of search and seizure operation conducted on 12.04.2010, again assessment was completed u/s 143(3)/153A.

6. 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.

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

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

8. The Id. AR for the assessee challenging the impugned order contended inter alia that the penalty proceedings have been initiated against the assessee on the basis of general satisfaction without applying his mind; that show-cause notice no.1323 dated 28.02.2013 brought n record by the assessee during the arguments before the Bench, is not a valid notice to initiate the penalty proceedings as the assessee has not been made aware if it has concealed the particulars of income or has furnished inaccurate particulars of income and relied upon the decision rendered by Hon'ble Karnataka High Court *CIT vs. Manjunatha Cotton and Ginning Factory & Ors. 359 ITR 565 (Karn.)*, confirmed by Hon'ble Supreme Court; that the assessee has bonafidely claimed

the apportionment of certain expenses between Export Oriented Unit (EOU) and non-EOU unit, proportionate to their turnover ratio; that the assessee has made full and complete disclosures in terms of the entries made in the books of account and as such, there is no element of concealment.

9. However, on the other hand, ld. DR for the Revenue to repel the arguments addressed by ld. AR for the assessee 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 cases of *CIT vs. Zoom Communication (P.) Ltd. – 327 ITR 510 (Delhi)*; *Mak Data P. Ltd. vs. CIT – 358 ITR 593 (SC)*; *UOI vs. Dharamendra Textile Processors – 295 ITR 244*; *B.A. Balasubramaniam & Bros. Co. vs. CIT – 236 ITR 977*; *CIT vs. Gates Foam & Rubber Co. – 91 ITR 467*; *CIT vs. Prasanna Dugar – 371 ITR 19 (Cal.)*; *ACIT vs. Smt. J. Mythili – 35 taxmann.com 86*; *Smt. Kran Devi vs. ACIT – (2009) 125 TTJ 631 (Delhi)*; *CIT vs. S.J. Prasad – (2008) 220 CTR 169 (Ker.)*; and *CIT vs. Smt. Meera Devi – (2012) 26 taxmann.com 132 (Delhi)*.

10. First of all, when we examine satisfaction recorded by the AO in para 3 of the assessment order which reads as, “For the

*above mentioned reasons, I am satisfied that assessee company concealed the income/filed inaccurate particulars, hence penalty proceedings u/s 271(1)(c) of the I.T. Act have been initiated separately.”, it goes to prove that at the stage of initiation of penalty proceedings, the AO was not categoric enough as to under which limb of section 271(1)(c) of the Act the penalty proceedings are being initiated viz. as to whether assessee has concealed the particulars of income or has furnished inaccurate particulars of income.*

11. Furthermore, even at the stage of issuance of the notice, the AO has not rectified the initial mistakes committed while recording the satisfaction in the assessment order to initiate the proceedings u/s 271(1)(c) rather issued the notice in vague, ambiguous and mechanical manner.

12. To decide this issue, we would like to extract notice issued u/s 271(1)(c) by the AO for ready perusal :-

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

***F.NO.1322***

***Office of the  
Deputy Commissioner of Income Tax  
Central Circle – I, Faridabad.***

***Dated : 28.02.2013***

***To***

***M/s. M/s CREW BOS PRODUCTS LTD.  
813/c, Jaina Tower – I,,***

*District Centre, Janakpuri, New Delhi.*

*Whereas in the course of proceedings before me for the assessment year 2005-06 it appears to me that you:-*

*Have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No.....dated..... or have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under section 142(1)/143(2) of the Income tAx Act, 1961 Notice under section..... No..... dated.....*

*Have concealed the particulars of your income or..... furnished inaccurate particulars of such income.*

*You are hereby requested to appear before me at 11.00 AM on 18.03.2013 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) of the Income Tax Act, 1961.*

*Sd/-*

*(Vandana V Mohite)*

*Deputy Commissioner of Income tax,  
Central Circle -I, Faridabad"*

13. 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 a tick has been marked against both the charges 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(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 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.”*

14. Hon’ble Supreme Court in case cited as *CIT vs. SSA’s Emerald Meadows – (2016) 73 taxmann.com 248 (SC)* dismissed the SLP filed by the Revenue challenging the deletion of penalty on ground of invalid notice issued u/s 274 read with section 271(1)(c) by returning the following findings :-

*“Section 274, read with section 271(1)(c). of the Income-tax Act, 1961 - Penalty - Procedure for imposition of (Conditions precedent) - Assessment year 2009-10 - Tribunal, relying on decision of Division Bench of Karnataka High Court rendered in case of CIT v. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565/218 Taxman 423/35 taxmann.com 250, allowed appeal of assessee holding that notice issued by Assessing Officer under section 274 read with section 271(1)(c) was bad in law, as it did not specify under which limb of section 271 (1)(c) penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income - High Court held that matter was covered by aforesaid decision of Division Bench and, therefore, there was no substantial question of law arising for determination - Whether since there was no merit in SLP filed by revenue, same was liable to be dismissed - Held, yes [Para 2] [In favour of assessee]”*

15. The ld. DR for the Revenue by relying upon the decision rendered by Hon’ble Madras High Court in case cited as *Sundaram Finance Ltd. vs. CIT – (2018) 403 ITR 407 (Madras)* contended that when the assessee has understood the purport and

import of notice, no prejudice was caused to the assessee. However, when we peruse para 16 of the judgment in ***Sundaram Finance Ltd. vs. CIT*** (supra), it is categorically recorded therein that, “*We have perused the notices and we find that the relevant columns have been marked, more particularly, when the case against the assessee is that they have concealed particulars of income and furnished inaccurate particulars of income. Therefore, the contention raised by the assessee is liable to be rejected on facts.*” Moreover, contention of the assessee as to the defective notice was rejected by the Hon’ble High Court on the ground that this issue can never be a question of law in the assessee’s case as it is purely a question of fact and the assessee had never raised this issue at earlier point of time rather raised this issue after 10 years before the Hon’ble High Court. So, in these circumstances, the aforesaid decision relied upon by the Id. DR is not applicable to the facts and circumstances of the case.

16. So, following the law laid down by Hon’ble High Court in case cited as ***CIT vs. Manjunatha Cotton and Ginning Factory & Ors.*** (supra), 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), affirmed by the Hon'ble Apex Court.

17. Furthermore, it is undisputed fact that the addition in this case was made by way of apportionment of certain expenses between EOU and non-EOU proportionate to their turnover ratio and on account of disallowance of Rs.50,000/- u/s 14A of the Act and by disallowing the prior period expenses. It is also not in dispute that out of total addition of Rs.57,88,881/-, Id. CIT (A) confirmed the addition of Rs.53,80,723/-. It is also not in dispute that the entire claim for apportionment of certain expenses between EOU and non-EOU, claiming exempt income u/s 14A and claimed prior period expenses has been made as per books of account duly audited. When the assessee has computed the disallowance claimed in accordance with the duly audited books of account which have been duly accepted by the Revenue, it would not amount to furnishing of inaccurate particulars of income so as to attract the provisions contained u/s 271(1)(c) of the Act.

18. Hon'ble Supreme Court in a case cited as **CIT vs. Reliance Petro Products Pvt. Ltd. – 322 ITR 158 (SC)** decided the

identical issue in favour of the assessee. Operative part of which is reproduced for ready reference as under :-

*“A glance at the provisions of section 271(1)(c) of the I.T. Act, 1961 suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word “particulars” used in section 271(1)(c) would embrace the detail of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.*

*Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars.”*

19. So, when it is not the case of the assessee that any details supplied by the assessee in return is incorrect or erroneous or false rather made a bonafide claim in accordance with the entries in the audited books of account, penalty proceedings contained u/s 271(1)(c) of the Act are not attracted.

20. Furthermore, when we examine the chronology of the events as to the passing of the assessment order, passing of the appellate

order and passing of penalty order, the penalty order is barred by limitation. Undisputedly, initially assessment proceedings were completed u/s 143 (3) for AY 2005-06 on 28.12.2007 and for both the assessment years 2005-06 & 2006-07, appeal on quantum was decided by Id. CIT (A) confirming the addition made by the AO on 29.12.2008 and 16.06.2009 for AYs 2005-06 & 2006-07 respectively. Penalty orders in these cases were passed on 30.03.2015 which was required to be passed within six months from the date of confirming the addition by the Id. CIT (A).

21. The Id. DR for the Revenue contended that the limitation is to be seen from the date of assessment order and consequent appeals order passed u/s 143(3)/153A. However, we are of the considered view that limitation started running from the date of original assessment order when the right accrued to the Revenue to initiate the penalty proceedings but they have not preferred to initiate the same. So, we are of the considered view that penalty orders passed by the AO in both the cases are also barred by limitation.

22. In view of what has been discussed above, case laws referred in preceding para no.9 relied upon by the Id. DR are not applicable to the facts and circumstances of the case as AO has failed to make out the case of concealment of income or furnishing of inaccurate

particulars of such income by the assessee so as to attract the provisions contained u/s 271(1)(c) of the Act and consequently, both the AO as well as ld. CIT (A) have erred in levying/confirming the penalty which is not sustainable in the eyes of law, hence ordered to be deleted. Consequently, both the appeals filed by the assessee are hereby allowed.

**Order pronounced in open court on this 19th day of December, 2018.**

**Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER**

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

**Dated the 19th day of December, 2018  
TS**

Copy forwarded to:

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

**AR, ITAT  
NEW DELHI.**