

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

**I.T.A .No.-5352/Del/2018  
(ASSESSMENT YEAR-2012-13)**

EMPIRE TUBEWELLS (P) LTD., 663, BASEMENT, STREET NO. 8, GOVIND PURI, KALKAJI, NEW DELHI - 110 019 <b>(PAN No. AAACE3632R)</b> <b>(APPELLANT)</b>	vs	DCIT, CIRCLE-8(1), NEW DELHI  <b>(RESPONDENT)</b>
Appellant by	Shri Gautam Jain, Advocate & Sh. Lalit Mohan, CA	
Respondent by	Shri S.L. Anuragi, Sr. DR	

**ORDER**

This appeal filed by the Assessee is directed against the Order dated 06.06.2018 of the Ld. CIT(A)-3, Delhi relevant to assessment year 2012-13 on the following grounds: -

- i) *That the Ld. CIT(A) has erred both in law and on facts in upholding penalty of Rs. 2,10,000/- in an order dated 6.6.2018 u/s. 271(1)(c) of the Act.*
- ii) *That the Ld. CIT(A) has failed to appreciate that in absence of any specific show cause notice having been issued, the levy of penalty is otherwise wholly misconceived.*
- iii) *That furthermore that since no satisfaction was recorded in the order of assessment, penalty levied is otherwise was without jurisdiction.*
- iv) *That the Ld. CIT(A) has sustained the penalty by failing to appreciate that assessment proceedings are not conclusive and as alleged*

*incorrect claim does not tantamount to furnishing of inaccurate particulars, when the details supplied by the assessee in return are not found to be incorrect or erroneous or false.*

- v) *That the Ld. CIT(A) has further erred both in law and on facts in imposing the penalty without considering submission of assessee and without granting any opportunity of being heard much less valid and proper opportunity and therefore the order made is contrary or principles of natural justice and hence a nullity.*
- vi) *That the Ld. CIT(A) has failed to appreciate the factual matrix of the case of the appellant and evidence on record and conclusions thus drawn mechanically are wholly unjustified.*

*It is therefore, prayed that the penalty levied of Rs. 2,10,000/- u/s. 271(1)© of the Act and sustained by the Ld. CIT(A) may kindly be deleted.*

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

3. At the time of hearing, Ld. Counsel of the Assessee has stated that no specific show cause notice have been issued and also no satisfaction was recorded in the order of assessment and penalty levied is otherwise was without jurisdiction. In this regard he draw my attention towards PB page no. 24, 32 & 39 which are show cause notices dated 14.7.2016, 25.7.2016 & 14.2.2017. He further draw our attention towards para no. 2

at page no. 1 of the Penalty Order dated 20.03.2017 and stated that AO has written that "Penalty Proceedings u/s. 271(1)© on account of furnishing inaccurate particulars of income was initiated alongwith the assessment order and notice issued to the assessee." However, vide para no. 4 at page no. 4 (last page) of the penalty order, it has been mentioned that *"In view of the above, it is clear that the assessee company has deliberately concealed particulars of income to the extent of Rs. 7,00,000/-"*, from which it is clear that no satisfaction has been recorded that under which charge the penalty is leviable i.e. on account of concealment of income or furnishing of inaccurate particulars. Hence, he stated that the penalty imposed is liable to be quashed on legal ground as the issue is squarely covered by the following decisions.:

- Hon'ble Karnataka High Court decision in the case of CIT & Ors. Vs. M/s Manjunatha Cotton and Ginnig Factory & Ors. (2013) 359 ITR 565
- Apex Court decision in the case of CIT & Anr. Vs. M/s SSA's Emerald Meadows in CC No. 11485/2016 dated 05.8.2016.

4. On the contrary, Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the relevant records, especially the orders of the revenue authorities alongwith the provisions of law as well as the case law cited by the Ld. Counsel of the Assessee. After perusing the PB page no. 24, 32 & 39 which are show cause notices dated 14.7.2016, 25.7.2016 & 14.2.2017, we note that no specific show cause notice have been issued for levying the penalty in dispute. For the sake of convenience, we are reproducing herewith the contents of the show cause notice dated 14.07.2015 as under:-

*..."Sub:- Penalty proceedings under section 271(1)© of the Income Tax Act, 1961 Assessment Year 2012-13 Show Cause Notice – reg.*

*Reference is invited to the above mentioned penalty proceedings which are pending for finalization.*

*2. Since the above penalty proceedings are now getting bared by limitation, you are hereby given an opportunity to show cause as to why penalty should not be levied upon you under the provisions of Income Tax Act as mentioned above. You are requested to please file your explanation, if any to the show cause notice being issued to you on*

*25.7.2016 at 11.30 am. Please note that in case of your failure to file explanation on the date fixed for hearing, it will be presumed that you have no explanation to offer and the penalty proceedings shall be finalized on the basis of material available on records and on merits of the case....”*

5.1 We further note from para no. 2 at page no. 1 of the Penalty Order dated 20.03.2017 and found that AO has himself written that *“Penalty Proceedings u/s. 271(1)© on account of furnishing inaccurate particulars of income was initiated alongwith the assessment order and notice issued to the assessee.”* and subsequently vide para no. 4 at page no. 4 (last page) of the same penalty order he has written that *“In view of the above, it is clear that the assessee company has deliberately concealed particulars of income to the extent of Rs. 7,00,000/-”*. Therefore, in my considered opinion, the AO is not clear under which charge the penalty is leviable i.e. whether it is on account of concealment of income or furnishing of inaccurate particulars. Hence, I am of the view that the AO has initiated the penalty for concealment of particulars of income or furnishing of inaccurate particulars, which is contrary to the provisions of law. Therefore, the penalty in dispute is not sustainable in the eyes of law. My aforesaid view is supported by the following decisions:-

i) "CIT & Anr. Vs. M/s SSA's Emerald Meadows – 2015 (11) TMI 1620 – Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 of Income Tax vs. Manjunatha Cotton and Ginning Factory (2013) (7) TMI 620-Karnataka High Court. Thus 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 – decided in favour of assessee."

ii) CIT & Anr. Vs. M/s SSA's Emerald Meadows – Hon'ble Supreme Court of India – reported in 2016 (8) TMI 1145 – Supreme Court. The Apex Court held that High Court order confirmed (2015) (11)

TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 – Decided in favour of assessee.”

iii) ITAT, 'A' Bench, New Delhi decision dated 05.12.2017 in the case of Ashok Kumar Chordia vs. DCIT passed in ITA No. 5788 to 5790/Del/2014 wherein the Tribunal has observed as under:-

*"7. We have heard both the parties and perused the orders passed by the Revenue Authorities alongwith the relevant records available with us. Firstly, we have perused the Notice dated 26.3.2013 issued by the AO for initiating the penalty and directing the assessee to appear before him at 11.30 AM on 26/04/2013 and issued a Show Cause to the assessee stating therein that **".....you have concealed the particulars of your income or furnished inaccurate particulars of such income..."**. After perusing the notice dated 26.3.2013 issued by the AO to the*

*assessee, we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income or concealment of income as well as in the penalty order dated 30.9.2013 AO has stated that he is satisfied that the assessee has concealed particulars of his income, which is contrary to law. In view of above, the penalty is not sustainable in the eyes of law. Our aforesaid view is fortified by the following decisions:-*

*i) "CIT & Anr. Vs. M/s SSA's Emerald Meadows - 2015 (11) TMI 1620 - Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 of Income Tax vs. Manjunatha Cotton and Ginning Factory (2013) (7) TMI 620-*

*Karnataka High Court. Thus 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 – decided in favour of assessee.”*

*ii) CIT & Anr. Vs. M/s SSA's Emerald Meadows – Hon'ble Supreme Court of India – reported in 2016 (8) TMI 1145 – Supreme Court. The Apex Court held that High Court order confirmed (2015) (11) TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 – Decided in favour of assessee.”*

*8. In the background of the aforesaid discussions and respectfully following the precedents, we delete the penalty in dispute and decide the issue in favor of the assessee and against the Revenue.”*

*iv) ITAT, 'D' Bench, New Delhi decision dated 26.5.2017 in the case of Rajender Jain vs. ACIT*

passed in ITA No. 6804/Del/2013 wherein the Tribunal has observed as under:-

*"7. We have heard both the parties and perused the orders passed by the Revenue Authorities alongwith the relevant records available with us. Firstly, we have perused the assessment order wherein the AO has recorded his satisfaction on the page 2, 2<sup>nd</sup> para viz. "I am satisfied that it is a fit case for initiation of penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income/concealment of income." We have also perused the notice dated 31.12.2007 issued by the AO for initiating the penalty and directing the assessee to appear before him at ----  
-----AM/PM on -----200----- and issued a Show Cause to the assessee stating therein that why an order imposing the penalty of amount should not be made u/s. 271(1)(c) of the I.T. Act, 1961. After perusing the notice dated 31.12.2007 issued by the AO to the assessee, we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income/concealment of income, but in the penalty order dated 06.11.2009 he has stated that he is satisfied that*

*the assessee has furnished the inaccurate particulars of income.*

*7.1 However, the Ld. CIT(A) has given clear finding regarding the furnishing of inaccurate particulars. For the sake of convenience, the relevant para no. 5.3.1 of the impugned order passed by the Ld. CIT(A) is reproduced as under:-*

*"5.3.1 The above findings of the Ld. CIT(A) clearly establishes that the appellant has concealed the income of Rs. 26,50,500/- and did not declare in the return of income inspite of admitting a disclosure of Rs. 40,00,000/- during survey. Thus, the appellant has furnished inaccurate particulars of his income. The facts of the case clearly reveal that the appellant tried to evade payment of taxes by furnishing inaccurate particulars of income. Therefore, I hold that the AO was fully justified in levying the penalty u/s. 271(1)(c) of the Act. The penalty levied by the AO is upheld. This ground of appeal is rejected."*

*8. Keeping in view of the aforesaid finding of the Ld. CIT(A), we are of the considered view that the AO has passed the assessment order wherein the AO has recorded his satisfaction on the page 2, 2<sup>nd</sup>*

*para viz. "I am satisfied that it is a fit case for initiation of penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income/concealment of income." Further the AO vide his Notice dated 31.12.2007 for initiating the penalty and directed the assessee to appear before him at -----AM/PM on -----200----- and issued a Show Cause to the assessee stating therein that why an order imposing the penalty of amount should not be made u/s. 271(1)(c) of the I.T. Act, 1961. After perusing the notice dated 31.12.2007 issued by the AO to the assessee, we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income/ concealment of income, but in the penalty order dated 06.11.2009 he has stated that he is satisfied that the assessee has furnished the inaccurate particulars of income. In our view the penalty in dispute is not sustainable in the eyes of law, because the AO has not recorded any clear finding whether the assessee was guilty of concealment of income or furnishing of inaccurate particulars of income. Secondly, the notice u/s. 271(1)(c) has been issued to the assessee levying*

*the penalty for furnishing of inaccurate particulars of income/concealment of income, whereas the penalty in dispute has been levied by the AO on account of furnishing of inaccurate particulars. In our view the penalty is not sustainable in the eyes of law. Our aforesaid view is fortified by the following decisions:-*

*i) "CIT & Anr. Vs. M/s Emerald Meadows - 2015 (11) TMI 1620 - Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 of Income Tax vs. Manjunatha Cotton and Ginning Factory (2013) (7) TMI 620-Karnataka High Court. Thus 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 – decided in favour of assessee.”*

*ii) CIT & Anr. Vs. M/s SSA’s Emerald Meadows – Hon’ble Supreme Court of India – reported in 2016 (8) TMI 1145 – Supreme Court. The Apex Court held that High Court order confirmed (2015) (11) TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 – Decided in favour of assessee.”*

*8.1 In the background of the aforesaid discussions and respectfully following the precedents, we delete the penalty in dispute and decide the issue in favor of the assessee and against the Revenue.”*

6. Keeping in view of the aforesaid discussions and respectfully following the aforesaid precedents, I cancel the penalty in dispute by respectfully following the aforesaid decisions and allow the grounds raised by the assessee.

7. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced on 04-02-2019.

**Sd/-  
(H.S. SIDHU)  
JUDICIAL MEMBER**

Dated: 04/02/2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI