

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos. 1348 & 1349/Del/2016
Assessment Years: 2005-06 & 2006-07

Shri Vikash Sharma, B-4A/14, 2 nd Floor, R.P. Bagh, New Delhi	Vs.	Income Tax Officer, Ward-28(2), New Delhi
PAN :BEUPS4557K		
(Appellant)		(Respondent)

Appellant by	Shri Vikas Sharma
Respondent by	Shri N.K. Bansal, Sr.DR

Date of hearing	29.01.2019
Date of pronouncement	14.02.2019

ORDER

PER O.P. KANT, A.M.:

These two appeals filed by the assessee are directed against combined order dated 01/01/2016 passed by the Ld. Commissioner of Income-tax (Appeals)-35, New Delhi [in short 'the Ld. CIT(A)'] for assessment years 2005-06 and 2006-07 respectively; in relation to penalty levied by the Assessing Officer in terms of section 271(1)(c) of the Income-tax act, 1961 (in short 'the Act'). The issue in dispute and facts and circumstances in both the appeals being identical, both were heard together and disposed off by way of this consolidated order for convenience.

Identical grounds have been raised in both the appeals except change of amount.

ITA No.1348/Del/2016 for AY:2005-06

2. The grounds of appeal raised in ITA No. 1348/Del/2016 are reproduced as under:

1. *The assessing officer had received information from the Jt. Director of Income Tax(lnv), Varansi that M/s Sajjan Kumar Suman Kumar Textiles Pvt. Ltd. Varansi has made sales of Rs.4542326/- to me and made a trading addition of Rs.419711/- by taking G.P. rate @9.24%, on total purchases of Rs.4542326/- and later on In appeal no. 169/2009-10, the CIT(Appeals) -XXV, New Delhi has confirmed the addition of Rs.419711/-.. On the facts and circumstances and in law the Id. CIT(A) has erred in imposing the penalty of Rs.114099/-.*
2. *The addition is confirmed merely relying on the collection book seized from M/s Sajjan Kumar Suman Kumar Textiles Pvt. Ltd. Varansi which was his record and the same is written by him.*
3. *No other material has been placed on record like any documents/ confirmation written by me or signed by me, which proves the fact that I had actually made purchases from him.*
4. *The Appellant prays that the Penalty imposed of Rs.114099/- be deleted.*
5. *The Appellant Craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of appeal.*

3. Briefly stated facts of the case are that during search proceeding under section 132 of the Act in the case of M/s Saajan Kumar Suman Kumar Textiles Private Limited, Varanasi (Uttar Pradesh), it was found on the basis of the documents seized that sales have been made in cash exceeding Rs.20,000/-to various concerns/parties. One of the such party, who made purchases in cash exceeding Rs.20,000/-totaling Rs.35,25,000/-, was the proprietary concern of the assessee namely M/s Maya Saree Centre. The above information was forwarded to the Assessing Officer of the assessee, who reopened the assessment and made additions under section 40(A)(3) of the Act at the rate of 20% of the cash payment of Rs.78,58,450/-found to be exceeding

Rs.20,000/-. He also found that purchase to the tune of Rs.45,42,326/-were not recorded on the books of accounts, so he made trading addition of Rs.4,19,711/- estimating gross profit at the rate of 9.24% i.e. rate which was declared by the assessee in the subsequent year. He also initiated penalty proceedings under section 271(1)(c) of the Act. In view of non-compliance by the assessee, he levied penalty of Rs.1,14,099/-. The Ld. CIT(A) also confirmed the penalty holding that the addition was not done on estimated basis.

4. Before us, the assessee himself represented and filed written submissions. In the submissions, it is mainly submitted that in the notice issued for initiating penalty under section 271(1)(c) of the Act, the Assessing Officer, did not specify as under which limb, whether for concealment of particulars of income or for furnishing inaccurate particulars of income, the penalty was levied. The assessee enclosed copy of the notice dated 29/12/2009 and submitted that in view of the decision of the Hon'ble Karnataka High Court in the case of CIT versus Manjunatha Cotton and Ginning Factory reported at (2013) 359 ITR 565 (ker.), the penalty cannot be imposed without specific notice to the assessee towards the nature of default.

5. The Ld. DR, on the other hand, relied on the order of the lower authorities.

6. We have heard the rival submission and perused the relevant material on record. We are of the view that penalty cannot be levied in the matter. The Hon'ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra) has held that penalty cannot be imposed without specifying the charges on which penalty is levied. Further, Hon'ble Karnataka

High Court in the case of CIT vs. SSA Emerald Meadows, 73 taxmann. Com 241 confirmed the order of the Tribunal, in which the Tribunal has allowed the appeal filed by the assessee holding that notice issued by the Assessing Officer under section 274 read with section 271(1)(c) of the Act to be bad in law as it did not specify the limb of the section 271(1)(c) of the Act, under which the penalty proceeding had been initiated, i.e., whether for concealment of particulars of the income or furnishing inaccurate particulars of income. The decision of the Hon'ble Karnataka High Court in the case of CIT Vs SSAs Emerald Meadows (supra) has been confirmed by the Hon'ble Supreme Court reported in 73 taxmann.com 248 by dismissing the SLP of the Department. In the present case also the Assessing Officer issued notice dated 29/12/2009 which is also mentioned in the penalty order, in which he has not specified the limb for which penalty was initiated. Even in the assessment order, the Assessing Officer did not mention as to under which limb of section 271(1)(c) the penalty had been initiated against the assessee. Therefore the show cause notice for levy of the penalty itself is invalid and bad in law and as such, the resultant proceedings get vitiated. Since the notice issued for initiating the penalty proceeding itself is not in accordance with law, therefore no penalty could be levied against assessee. We accordingly set aside the order of the authorities below and cancel the penalty.

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

ITA No.1349/Del/2016 for AY: 2006-07

8. In ITA No. 1349/Del/2016 for assessment year 2006-07 also the Assessing Officer in the notice issued, has not specified the

limb on which the penalty was initiated. The facts and circumstances of the year under consideration are identical to the facts and circumstances of ITA No.1348/Del/2016 for assessment year 2005-06, accordingly following the finding above in ITA No.1348/Del/2016 for assessment year 2006-07, the order of the lower authorities in the year under consideration are also set aside and penalty levied is cancelled.

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

10. To sum up, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 14th February, 2019.

Sd/-
[BHAVNESH SAINI]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 14th February, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi