

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

BEFORE SH. N. S. SAINI, ACCOUNTANT MEMBER  
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

**I. T. A. No. 294/(Asr)/2016**  
Assessment Year: 2006-07

Smt. Janak Rani Dhingra,  
W/o Shri A.P.Dhingra,  
138, Mange Wala House,  
Pati Wali Gali, Moga,  
(Now 28, Ground Floor, Ashoka Enclave,  
Sector 34, Faridabad (Haryana))

Vs. Income Tax Officer,  
Ward-1,  
Moga

PAN No. ACQPD3274B

**(Appellant)**

**(Respondent)**

Appellant by : Sh. P.N. Arora, Advocate

Respondent by: Sh. Bhawani Shankar, DR

Date of Hearing : 11.2.2019

Date of Pronouncement : 12.2.2019

**ORDER**

**Per N.S. SAINI, AM:**

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-3, Ludhiana dated 4.3.2016.

2. The sole issue involved in this appeal is that the CIT(A) erred in confirming the levy of penalty of Rs. 1,60,000/- by the Assessing officer (AO) u/s 271(1)(c) of the I.T. Act, 1961 (hereinafter referred to as "Act", in short).

3. The brief facts of the case are that the assessee filed return of income on 10.2.2006 and claimed deduction of Rs. 4,40,000/ on purchase of residential plot against Long Term Capital Gains arising out of sale of residential house. The AO was

of the view that deduction u/s 54 and Sec. 54F of the Act are allowable to the Assessee only on construction or purchase of new residential house, therefore, he made addition of Rs. 4,40,000/- disallowing the deduction of Long Term Capital Gains from sale of residential house as declared by the Assessee. Thereafter, the AO levied penalty u/s 271(1)(c) of the Act of Rs. 1,60,000/- being 100% of the amount of tax sought to be evaded by the assessee on the ground of furnishing of inaccurate particulars of income by the assessee.

4. On appeal, the CIT(A) confirmed the order of the AO.

5. Before us, the AR of the assessee referred to notice issue u/s 271(1)(c) of the Act, copy of which is placed at page 3 of the paper book filed by the assessee and pointed out therefrom that the AO has issued notice on the ground that the assessee has concealed the particulars of income or furnished inaccurate particulars of such income. He submitted that as the notice u/s 271(1)(c) of the Act to the assessee is not specific about the charge whether it was for furnishing of concealment of particulars of income or for furnishing of inaccurate particular of income, the said notice was bad in law and consequently the penalty order passed by the AO on 26.6.2009 is bad in law and liable to be cancelled. For this proposition he relied on the decision of the Amritsar Bench of the Tribunal in the case of 'Mrs. Malti Gupta, Jalandhar vs ITO, Jalandhar' passed in ITA No.757/Asr./2017 for Assessment Year 2008-09 dated 17.1.2009 and submitted that following the same, the order for levying penalty u/s 271(1)(c) of the Act should be cancelled.

6. On the other hand, the Ld. DR relied on the orders of the authorities below.

7. We have heard the rival submissions and perused the orders of the lower authorities and materials available on record. We find a notice dated 18.12.2008, issued u/s 274 read with section 271(1)(c) of the I.T. Act, 1961 reads as under:-

*“Whereas in the course of proceedings before me for Assessment Year 2006-07 it appears to me that*

*–*

*.....*

*have concealed the particulars of your income or furnished inaccurate particulars of such income”*

*.....*

8. 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."*

9. 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.

10. 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.

11. 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 such income. Hence, respectfully following the quoted decision of Hon'ble Karnataka High Court, we cancel the order of the Assessing Officer dated 26.9.2009 levying penalty of Rs. 1,60,000/- and allow the grounds of appeal of the assessee.

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

Order pronounced in the open court on 12.2.2019

Sd/-  
**(N. K. Choudhry)**  
**Judicial Member**

Sd/-  
**(N.S. Saini)**  
**Accountant Member**

Date: 12.02.2019

'rkk'

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.