

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

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

ITA No.39(Asr)/2017
Assessment Year:2012-13

Shri Shirdi Sai Shakti Peeth
Trust,
Near Radha Vatika Trust,
Amloh Road, Khanna.

Vs. ITO (Exemptions),
Jalandhar.

[PAN:AAITS 7365N]
(Appellant)

(Respondent)

Appellant by: Sh. Parikshit Aggarwal (Ld. CA)
Respondent by: Sh. Bhawani Shankar (Ld. DR)

Date of hearing: 12.02.2019
Date of pronouncement: 15.02.2019

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee/Appellant against the order dated 17.08.2016 passed by the Ld. CIT(A), u/s 250(6) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The Ld. DR although sought adjournment, however at the outset, the Ld. AR submitted that the instant case is covered by Apex Court Judgment, therefore we rejected the application for adjournment and proceeded with the case.

3. In the instant case, the AO initiated penalty proceedings on both of the limbs as specified in section 271(1)(c) of the Act i.e. 'concealment of income and furnished inaccurate particulars of income' and thereafter issued the

notice u/s 274 without specifying the limb of the penalty imposable and finally imposed penalty for furnishing of inaccurate particulars of income

4. Hon'ble Apex Court 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 had 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 upon 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."*

5. 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 05-03-2015 without striking off the irrelevant words, 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 mind which is bad in law, hence can not consider a valid notice sufficient to impose penalty u/s 271(1)(c) of the Act. Even the mind of the AO, while initiating the penalty proceedings, issuing notice u/s 274 of the Act and imposing the penalty itself, was not clear under which limb, the assessee had to reply and to defend its case, therefore we are of the view that under these circumstances, the penalty is not leviable as held by the various Court including Apex Court and hence, we have no hesitation to delete the penalty levied by the AO.

6. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open Court on 15.02.2019.

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

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated: 15.02.2019

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- (2) The ITO (Exemptions), Jalandhar.
- (3) The SR DR, I.T.A.T., Amritsar

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