

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**I.T.A .No.-6030/Del/2018
(ASSESSMENT YEAR-2006-07)**

York Scientific Industries P. Ltd. C/o Vinod Arora, 14, Chitra Vihar Delhi. PAN No. AAACY1002H (APPELLANT)	vs	ITO Ward 27(4), New Delhi. (RESPONDENT)
Appellant by		Shri Suresh Anand, FCA
Respondent by		Shri S.L. Anuragi, Sr. DR

ORDER

This appeal filed by the Assessee is directed against the order dated 04.06.2018 of the Ld. CIT(Appeals)-9, New Delhi relevant to assessment year 2006-07 on the following grounds of appeal: -

1. *"That on facts and circumstances of the case and in law, the penalty order dated 25.09.2014 passed u/s 271(1)(c) of the Income Tax Act, 1961 is without jurisdiction, illegal, bad in law and void-ab-initio.*
2. *That Ld. CIT(A) has erred in not appreciating that the notice issued under section 271(1)(c) is illegal as the printed from without specifically mentioning the proceedings whether the proceedings are initiated on the ground of concealment of income or on account of furnishing of inaccurate particulars. Therefore, the penalty is liable to be deleted.*
3. *That on the facts and in the circumstances of the case, the CIT(A) has erred in confirming the penalty by overlooking to*

the judgment of Hon'ble Supreme Court in the case of M/s SSA's Emerald Meadows Vs. CIT 242 Taxman 180 (SC).

4. *The appellant craves leave to add, amend, alter and or vary and of the grounds of appeal before or at the time of hearing.*

The Penalty order being erroneous, illegal and arbitrary, the same may kindly be deleted."

2. The brief facts of the case are that assessment in this case was completed u/s. 143(3)/147 of the Income Tax Act, 1961 (in short "Act") vide order dated 14.3.2014 by making addition of Rs. 11,31,492/-. In this case the ACIT, CC-22, New Delhi had forwarded the information that assessee company had received accommodation entry amounting to Rs. 10 lakhs from M/s Galaxy Mines on 26.07.2005, i.e., during the FY 2005-06 relevant to assessment year 2006-07. During the course of survey u/s. 133A of the Act conducted at the business premises of Sh. SK Gupta by the Investigation Wing. Therefore, after recording reasons for initiation of proceedings u/s. 147, notice u/s. 148 of the Act dated 5.3.2013 was issued by the DCIT, Circle 18(1), New Delhi with the due approval of the Addl. CIT, Range-18, New Delhi as accorded u/s. 151 of the I.T. Act. The notice was duly served upon the assessee. Subsequently, the case had been transferred to ITO, Ward 18(4), New Delhi. In response to the notice issued u/s. 148 of the Act, the assessee vide its submission dated 4.9.2013 had submitted "That the original return for the AY 2006-07 filed on 30.11.2006 may be treated

as return having been filed in response to notice u/s. 148 of the Act.” Subsequently, notices u/s. 143(2)/142(1) of the Act alongwith questionnaire were issued on 21.8.2013 to the assessee. Further to verify the creditworthiness and genuineness of the transaction amounting to Rs. 10 lacs, show cause notices were issued on 23.12.2013 and 24.2.2014. In response to same, the AR of the assessee filed its submission dated 11.3.2014 assessee had submitted that no documents could be furnished in support of loan of Rs. 10 lakhs from M/s Galaxy Mines and Stones Pvt. Ltd. and offered the amount of Rs. 11,31,492/- (Rs. 10,00,000/ Plus interest of Rs. 1,31,492/-) as its additional income over and above the declared income. Further, the AR of the assessee also vide note sheet entry dated 14.3.2014 agreed for the taxation of above amount. AO observed that the assessee clearly declares that there was a transaction between M/s Galaxy Mines & Stones Pvt. Ltd. and assessee to the extent of Rs.10 lakh, whether the same was a loan transaction in its true sense, could not be verified since the assessee had submitted that no documentary evidence available with him in support of the same. This creates a suspicion about the nature and genuineness of transaction. Hence, AO noted that it appears to be an accommodation entry from M/s Galaxy Mines & Stones Pvt. Ltd., as Sh. S.K. Gupta had admitted before the Investigation Wing during the course of Survey u/s 133 A of the Act. Accordingly, an

amount of Rs.11,31,492/- was added to the total income of the assessee u/s 68 of the Act. AO further observed that since, the assessee has concealed true particulars of its income, penalty proceedings u/s 271(1)(c) of the Act are initiated through issue of notice u/s 274 read with Section 271 of the Act dated 14.3.2014 fixing the case for 7.4.2014. In response to same none attended nor any information / details had been received. The assessee was given another opportunity vide show cause notice dated 12.8.2014 fixing the case for 25.8.2014 to show cause why the penalty u/s 271(1)(c) of the Act should not be levied in the case. However, there is no compliance in response to the same. AO further observed that no compliance to both the notices issued u/s 271(1)(c) of the Act clearly shows that the assessee has nothing to say / submit with regard to non declaration of true particulars of its income. AO further noted that in the case of MAX Data v. CIT (SC) 38 taxmann.com 448 - Under Explanation 1 to section 271(1)(c). It has been held that voluntary disclosure of concealed income does not absolve assessee from imposition of penalty u/s 271(1)(c) of the Act if the assessee fails to offer an explanation which is bona fide and proves that all the material facts have been disclosed. Under the circumstances of the case and on the basis of the facts available on record, AO held that the assessee had deliberately filed inaccurate particulars of its income with an intention to evade payment

of taxes. This clearly shows the willful intention of the assessee to defraud tax. Therefore, the provisions of section 271(1)(c) are attracted in this case. Therefore, he held that the assessee had furnished inaccurate particulars of income and concealed the income in order to evade the payment of taxes. Accordingly AO imposed minimum penalty of Rs.3,80,860/- u/s 271(1)(c) of the Income-tax Act, 1961, which is equal to 100% of the tax sought to be evaded, vide order dated 25.09.2014. Against the penalty order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 04.06.2018 has dismissed the appeal of the assessee by holding that the assessee's case is squarely failed to adduce a bonafide explanation within the scope of explanation 1 to section 271(1)(c) of the Act. Aggrieved with the impugned order, assessee is in appeal before the Tribunal.

3. Ld. Counsel for the assessee submitted that the penalty order dated 25.9.2014 passed u/s. 271(1)(c) of the Act amounting to Rs. 3,80,860/- of the I.T. Act is without jurisdiction, illegal bad in law and void ab initio. He further submitted that Ld. CIT(A) erred in not appreciating that the notice issued under section 271(1)(c) is illegal as the printed form without specifically mentioning the proceedings whether the proceedings are initiated on the ground of concealment of income or on account of furnishing of inaccurate particulars. Therefore, the penalty is liable to be deleted. He further submitted that Ld.

CIT(A) also erred confirming the penalty by overlooking to the judgment of the Hon'ble Supreme Court in the case of M/s SSA's Emerald Meadows vs. CIT 252 Taxman 180 (SC). In support of his contention, he relied upon the submissions made before the Ld. CIT(A).

4. On the contrary, Ld. DR heavily relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned, which does not need any interference on the legal issues as well as on merits of the case. In support of his contention, he also relied upon the case law of the Hon'ble High Court of Delhi in the case of Pr. CIT vs. Dr. Vandana Gupta in ITA 219/2017 dated 20.03.2008.

5. I have heard both the parties and perused the records, especially the impugned order and the case laws cited by both the parties and cited by the Ld. CIT(A) in his order. It is noticed that during the appellate proceedings the assessee has challenged the assessment proceedings completed u/s 147/143(3) through an additional ground and contended that it is legally entitled to challenge the validity of impugned order on the ground that proper and valid assessment was not completed in the case of the assessee, and that the additional ground raised is purely legal issue and the consequent penalty proceedings is also invalid. The contention of the assessee was however not acceptable for the reason that the additional ground being raised is not pertaining to penalty order and that in the present appeal, subject

matter to be decided is relating to imposition of penalty and not the assessment order. I further note that it is settled law that legal ground has to be in relation to the issue and proceedings of the impugned order only and no indirect reference to any proceedings can be made a basis of legal objections. Further issue relates to validity of the penalty proceedings. It was contended that penalty notice issued u/s 274 r.w.S 271 does not satisfy the exact nature of fault whether concealment of income or furnishing of inaccurate particulars of income and therefore, in view of judgment in the case of CIT vs. SSA Emerald Meadow (2016) 359 ITR 565, the penalty is invalid and therefore, penalty imposed be deleted. I note that Ld. CIT(A) has dealt this objection by observed that as has been decided by the Hon'ble Courts/Tribunals wherein note has been taken of the judgment in the case of SSA Emerald (supra) and also in the case of Manjunath Cotton Mills and it has been held that none striking of one of the portion in the penalty notice cannot be taken to declare the penalty proceeding invalid. I further find that this issue has also been decided in the case of DCIT vs Shah Rukh Khan (2018) 93 taxmann.com 320 (Mumbai-trib.) where Hon'ble ITAT Mumbai wherein following has been held:-

The Id. A. R further to support his contention that because of the failure on the part of the A.O to strike off the

irrelevant default in the body of the 'SCN', the assessee had remained divested of any opportunity of putting forth its case before the A.O that no penalty under the aforesaid statutory provision was liable to be imposed in his hands, relied upon the following judicial pronouncements:-

(i) CIT vs Manunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Kar.)

(ii) Dilip N. Shroff v JCIT (2007) 291 ITR 519 (SC)

(iii) Commissioner of Income Tax v. Samson Pernchery (2017) 98 CCH 0039 (Bom.)

(iv) CIT vs SSA's Emerald Meadow 73 Taxman.com 241 (Kar.)

(v) SSA's Emerald Meadows V. CIT 242 Taxman 180 (SC)

Per contra, the Id. D.R submitted that the contentions advanced by the

Id. A.R as regards the validity of the penalty proceedings not being maintainable, thus may not be admitted. The Id. D.R submitted that though the assessee was at a liberty to raise an objection, but however, the same had to be strictly confined as per Rule 27 of the Appellate Tribunal Rules, 1963. It was submitted by the Id. D. R that raising of an objection for the very first time by the Id. A.R during the course of the hearing of the appeal, and that too orally, without putting the revenue to notice in advance, could not be admitted. The Id. D.R to support his aforesaid contentions relied on the following judicial pronouncements:

(i) CIT, Central-II v Divine Infracon Pvt. Ltd. (ITA No 771./Mum/2013.08.2018, (High Court of Delhi)

(ii) CIT-4 vs Jamundadas Virji Shares and Stock Brokers Pvt. Ltd. (2013)

(iii) DCIT vs Sandip M. Patel (2012) 137ITD 104 (Ahmedabad)

(iv) CIT vs Jindal Polyester Ltd. (2017) 397 ITR 282 (ALL.)

(v) Addl. CIT V Gurjargravures (P.) Ltd. (1978) 111 ITR 1 (SC)

(vi) CIT vs Edwert Keventer (Successors) P. Ltd. (1980) 123 ITR 200 (D)

(vii) Ultratech cement Ltd. vs Addl. CIT, Range-2(2), (2017) 298 CTR 43

(viii) Self Knitting works Vs CIT(2014) 227 Taxman 253 (P & H)

The Id. D.R relying on the aforesaid judicial pronouncements, submitted that as per the settled position of law, the objection raised by the Id. A.R during the course of hearing of the appeal as regards the validity of the jurisdiction assumed by the A.O. for

imposing penalty 271(1)(c) was not admissible and thus no cognizance of the same may be drawn. Alternatively, and without prejudice to the objection raised to the admission of the challenge thrown by the Id. A.R to the validity of the assumption of jurisdiction by the A.O for imposing penalty under Sec. 271(1)(c), it was averred by the Id. D.R that even otherwise the failure on the part of the A.O to strike off the irrelevant default did not in any way affected the validity of the penalty imposed by the A.O under Sec. 271(1)(c). The Ld. D.R. in support of his said contention relied on the following judicial pronouncements:-

- (i) M/s Maharaj Garge & company vs. The Commissioner of Income Tax, Nagpur (Income Tax reference no. 21 of 2008, dated 22.08.2017)*

(ii) Commissioner of Income Tax v SMT. Kaushalaya & Others (1995) 21 (Bom.)

(III) Earthmoving Equipment Service Corporation v DCIT 22(2))Mumbai ITA No. 6617/Mum/2014, dated 02.05.2017)

(iv) Dhaval K. Jain v ITO Ward 16(3)(1), Mumbai (ITA no. 996/Mum/2014 dated 30.09.2016).

19. We are of the considered view that in the backdrop of the aforesaid judgment of the Hon'ble High Court of jurisdiction, allowing the assessee respondent to proceed with his objection which was fo the very first time orally raised during the course of hearing of the appeal before us, undoubtedly would be nothing short of proceeding with the hearing of the appeal, without affording an opportunity of being heard to the appellant revenue in context of the issue under consideration."

5.1 Keeping in view of the facts and circumstances and following the case laws, the issue relating to validity of the proceeding u/s 271 (1)(c)

was rightly held to be not tenable and therefore, this ground was correctly dismissed by the Ld. CIT(A), which does not need any interference on my part, hence, I uphold the action of the Ld. CIT(A) on the issue in dispute and dismiss the ground raised by the Assessee.

6. Even otherwise, I find that the assessee has failed to controvert the facts by the AO that the said amount of Rs.10 lakhs was an accommodation entry and that it has furnished inaccurate particulars of income resulting in a concealment of income. There is no explanation whatever as envisaged u/s 271(1)© has been adduced. In fact the explanation 1 to section 271(1)© is also not found to be giving any relief to the assessee for accepting the addition of the income. It is not the case of the assessee that it has a bonafide explanation for the said receipt of Rs.10 lakhs not offered for taxation. In the fact of the case, I find the judicial precedents in the case of Mak Data vs. CIT (SC) (38 taxmann.com 448) was rightly applied by the Ld. CIT(A) wherein Hon'ble Court has held as under:

"The Assessing Officer, shall not be carried away by the plea of the assessee like 'voluntary disclosure', 'buy peace', 'avoid litigation', 'amicable settlement', etc. to explain away its conduct.

The question is whether the assessee has offered any explanation for concealment of particulars of income or

furnishing inaccurate particulars of income. Explanation to section 271(1) raises a presumption of concealment, when a difference is noticed by the Assessing Officer, between reported and assessed income.

The burden is then on the assessee to show otherwise, by cogent and reliable evidence.

When the initial onus placed by the explanation, has been discharged by him. the onus shifts on the revenue to show that the amount in question constituted the income and not otherwise. [Para 7]

Assessee has only stated that he had surrendered the additional sum with a view to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the income tax department.

Statute does not recognize those types of defences under the Explanation 1 to section 271(1)(c). It is trite law that the voluntary disclosure does not release the assessee from the mischief of penal proceedings under section 271(1)(c). The law does not provide that when an assessee makes a voluntary disclosure of his

concealed income, he has to be absolved from penalty’.

[Para 7]

The surrender of income on this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the Assessing Officer in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary.

The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings.

Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year.

The Assessing Officer, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under section 271, read with section 274. [Para 9]

The Assessing Officer has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the Assessing Officer is not required to record his satisfaction in a particular manner or reduce it into writing. [Para 10]

In view of above, impugned penalty order passed by the High Court deserved to be confirmed. [Para 11]"

6.1 I further note that the Hon'ble High Court of Delhi in the case of Pr. CIT vs. Dr. Vandana Gupta in ITA 219/2017 dated 20.03.2008 on similar facts has held as under:-

"...13. In the present case too, the assessee merely made a voluntary surrender; she did not offer any explanation as to the nature of income or its source. The observations in MAK Data (supra) are that the authorities are not really concerned with the statement-whether voluntarily or otherwise and have to see whether there was any non disclosure of material facts,

or income. The complete failure to furnish any details with respect to the income, which if given could have been the only reasonable basis for deletion of penalty, in the opinion of the court, reinforced the views of the AO and CIT (A) that the revised return was an afterthought, based on the subsequent event of disclosure of '2,00,00,000/-. The court further notices that by reason of Explanation 1 to Section 27i(i)(c), an assessee is not absolved of penalty, if she or he "offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him". The mere offer therefore, of the amount during the search in the absence of any explanation for the source of income, renders the assessee's argument insubstantial in the totality of circumstances.

14. For the foregoing reasons, the question framed is answered against the assessee and in favour of the revenue; the appeal is therefore allowed but without order on costs."

6.2 Keeping in view of the facts and circumstances and respectfully following the aforesaid precedents, I am of the view that in the present case the assessee failed to adduce a bonafide explanation within the scope of explanation 1 to section 271(1)(c), hence, the Ld. CIT(A) has rightly confirmed the penalty in dispute, which does not need any interference on my part, hence, I uphold the action of the Ld. CIT(A) on the issue of dispute and reject the grounds.

7. In the result, the Appeal of the Assessee is dismissed.

Order pronounced on 24-04-2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 24/04/2019

SRBhatnagar

Copy forwarded to: -

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

By Order,

Assistant Registrar, ITAT, Delhi Benches

