

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.1410/Bang/2018
Assessment year : 2006-07

Shri. V. Babukumar, No.3667, 8 th Cross, 13 th E Main, Indiranagar, Bangalore – 560 038. PAN : AEBPB 3981 N	Vs.	Deputy Commissioner of Income Tax, Circle – 7(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sheetal Borkar, Advocate
Revenue by	:	Shri. R. N. Siddappaji, Addl. CIT

Date of hearing	:	11.04.2019
Date of Pronouncement	:	30.04.2019

ORDER

Per Shri Jason P Boaz, A.M. :

This appeal by the assessee is directed against the order of CIT(A)-3, Bangalore, dated 06.04.2018 for Assessment Year 2006-07, upholding the levy of penalty under section 271(1)(c) of the Income Tax Act, 1961 (in short ‘the Act’).

2. Briefly stated, the facts relevant for disposal of this appeal are as under:

2.1 The assessee filed the return of income for Assessment Year 2006-07 on 31.10.2006 declaring total income of Rs.25,73,874/-. The case was taken up for

scrutiny and the assessment was concluded under section 143(3) of the Act vide order dated 29.12.2008, wherein the assessee's income was determined at Rs.60,15,011 and penalty proceedings were simultaneously initiated by issue of notice under section 274 r.w.s. 271 of the Act dated 29.08.2008. The order of assessment was subsequently rectified vide order dated 17.12.2009, whereby the assessee's income was now determined at Rs.55,20,892/-.

2.2 Subsequent to the passing of assessment order dated 29.12.2008 and initiation of penalty proceedings by issue of notice under section 274 r.w.s. 271 of the Act dated 29.08.2008, the assessee preferred an appeal before CIT(A) who allowed the assessee partial relief. On further appeal, the Tribunal vide order in ITA No.112/Bang/2011 dated 27.04.2012 allowed the assessee further relief. After keeping the penalty proceedings in abeyance till disposal of the assessee's appeal before ITAT,, the Assessing Officer (AO) took up the penalty proceedings and after considering the assessee's submissions proceeded to levy penalty of Rs.2,67,998/- under section 271(1)(c) of the Act vide order dated 30.10.2012. On appeal, the CIT(A) dismissed the assessee's appeal vide order dated 06.04.2018.

3. Aggrieved by the order of CIT(A)-3, Bangalore, dated 06.04.2018 upholding the levy of penalty under section 271(1)(c) of the Act for Assessment Year 2006-07 in the case on hand, the assessee has preferred this appeal before the Tribunal, wherein he has raised the following grounds:-

1. *The learned CIT (A) erred in passing the order in the manner in which he did.*
2. *The learned CIT (A) ought to have appreciated the explanation of the Appellant that income declared in previous year was available for the source of Investment.*
3. *The learned CIT (A) having issued the notice under section 274 read with section 271(1)(c) of the Act in a mechanical manner, the*

penalty order passed under section 271 (1) (c) of the Act is not sustainable in the eye of law.

4. *The Appellant begs to submit that the decision of the jurisdictional High Court in the case of CIT vs. Manjunatha Cotton 86 Ginning Factory(2013) 359 ITR 565 (Karn) is squarely applicable and therefore the impugned order of the authorities below is required to be aide.*
5. *The learned CIT (A) erred in disallowing the expenses genuinely incurred by the Appellant without appreciating the explanation of the Appellant.*
6. *Without prejudice, the disallowance as made by the CIT (A) is arbitrary, excessive and ought to be deleted in full.*
7. *For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed.*

4. Ground Nos.3 and 4

4.1 At the outset , the learned Counsel for the assessee urged ground Nos.3 and 4 contending that the CIT(A) ought to have deleted the penalty levied u/s 271(1)(c) of the Act for Assessment Years 2012-13 following the binding decision of Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Kar). Since the notice u/s 274 r.w.s. 271 of the Act for initiation of penalty u/s 271(1)(c) of the Act dated 29.12.2008 was defective and issued in a mechanical manner, without any application of mind by the AO, the conditions precedent for a passing of valid penalty order u/s 271(1)(c) of the Act were absent. In this regard, the learned AR drew the attention of the Bench to the copy of the impugned notice, issued u/s 274 r.w.s. 271(1)(c) of the Act dated 29.12.2008 for Assessment Year 2006-07 filed by the assessee, to demonstrate that the said notice was defective, in as much as it did not indicate whether it was issued to the assessee for concealment of income or for furnishing of inaccurate particulars of income. In support of the proposition that notice issued u/s 274 r.w.s. 271 of the Act, without

specifying the default; i.e., whether the notice is issued for concealment of income or furnishing of inaccurate particulars of income; is invalid and consequential penalty proceedings / orders are also not valid; the learned AR placed reliance on the decision of the Hon'ble Karnataka High Court in the case of M/s. Manjunatha Cotton & Ginning Factory in 359 ITR 565 (Kar). It was prayed that in the light of the above judicial pronouncements of the Hon'ble Karnataka High Court (supra), the orders levying penalty u/s 271(1)(c) of the Act for Assessment Year 2006-07 in the case on hand is liable to be quashed / cancelled.

4.2 Per contra, the learned DR for Revenue placed reliance on the orders of the AO as being in order.

4.3.1 We have heard and carefully considered the rival contentions and submissions on record and the decision of the Hon'ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (Supra). The notice issued by the AO u/s 274 r.ws 271 of the Act dated 29.12.2008 for initiation of penalty proceedings u/s 271(1)(c) of the Act for Assessment Year 2006-07 in the case on hand (copy filed by the learned AR), has been carefully perused and we find that the AO has not deleted the inappropriate words and portions in the relevant paragraph of the notice; whereby it is not clear as to which default is committed by the assessee, i.e., whether it is for furnishing of inaccurate particulars of income OR concealing particulars of income that the penalty u/s 271(1)(c) of the Act is sought to be levied.

4.3.2 The Hon'ble Karnataka High Court in the case of M/s Manjunatha Cotton & Ginning Factory in (359 ITR 565) (Kar) has held that a notice issued u/s 274 r.ws 271 of the Act without specifying the nature of default; i.e. whether the notice is issued for concealment of particulars of income or furnishing of inaccurate particulars of income; is invalid and the consequential penalty proceedings/orders are also not valid. The relevant portion of the aforesaid judgment of the Hon'ble Karnataka High Court (Supra) at paras 59 to 61 are extracted hereunder:-

"59. As the provision stands, the penalty proceedings can be initiated on various ground set out therein, if the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation-I or in Explanation- 1(B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in Section 271 (I)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100% to 300% of tax liability. As the said provisions have to be held to be stand by construed notice issued under Section 274 should satisfy the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended if the show cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.

60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing

the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.

61. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are different. Thus the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The Apex Court in the case of Ashok Pal reported in 292 ITR 11 at page 19 has held that. concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of M4NU ENGINEERING reported in 122 ITR 306 and the Delhi High Court in the case of VIRGO IvLARKETING reported in 171 Taxman 156, has held that penalty has to be clear as to the limb for which it is levied and the action being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind."

4.3.3 The aforesaid view taken by the Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory (Supra) was followed by the Hon'ble Karnataka High Court in the case of SSAS Emerald Meadows in ITA No.380 of 2015 dated 23/11/2015; wherein the Hon'ble Court upheld the order of co-ordinate bench of this Tribunal, cancelling the penalty levied on the basis of the defective notice issued by the AO. Revenue's SLP filed against the said judgment of the Hon'ble High Court in the case of SSAS Emerald Meadows (Supra) has also been dismissed by the Hon'ble Apex Court in CC/I485/2016 dated 5/8/2016.

4.3.4 Respectfully following the judgments of the Hon'ble Karnataka High Court in the cases of M/s. Manjunatha Cotton & Ginning Factory (359 ITR 565) (Kar) and SSAS Emerald Meadows in ITA No.380 of 2015 dated 23/11/2015, we hold that the notice issued by the AO u/s 274 r.w.s 271 of the Act dated 29.12.2008 for initiating penalty proceedings for Assessment Year 2006-07 is invalid and consequently, the penalty proceedings conducted in pursuance thereof, are also invalid. We therefore

cancel the penalty levied u/s. 271(1)(c) of the Act for Assessment Year 2006-07. Consequently, ground Nos.3 and 4 raised by the assessee is allowed.

5. In view of our finding rendered in respect of ground Nos.3 and 4, the other grounds of appeal raised by the assessee on merits of the levy of penalty become academic in nature and do not require adjudication.

6. In the result, the assessee's appeal for Assessment Year 2006-07 is allowed as indicated above.

Order pronounced in the open court on this 30th day of April, 2019.

Sd/-
(N. V. VASUDEVAN)
Vice President

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore.

Dated: 30.04.2019.

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.