

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.5067/M/2017  
Assessment Year: 2011-12**

|   |     |   |
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| Mr. Sharad Bhagwant<br>Tembwalkar,<br>Flat No.1501, Adonis Blg.<br>Raheja Acropolis,<br>Near Telecom Factory,<br>Govandi,<br>Mumbai - 88<br><b>PAN: ADVPT 6884B</b> | Vs. | ITO – Ward – 26(1)(2),<br>Income Tax Office<br>(Bandra),<br>Bandra Kurla Complex,<br>C-12, 2 <sup>nd</sup> Floor,<br>Bandra (E),<br>Mumbai - 400051 |
| (Appellant)   |     | (Respondent)  |

**Present for:**

Assessee by : Shri V.G. Ginde, A.R.  
Shri Kumar Kale, A.R.

Revenue by : Shri Chaudhary Arun Kumar Singh, D.R.

Date of Hearing : 24.04.2019

Date of Pronouncement : 30.04.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 31.05.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The assessee has filed various grounds appeal challenging the imposition of penalty under section 271(1)(c) of the Act on merit. The assessee has also filed application dated 22.04.2019 raising two additional grounds which are reproduced as under:

"1. Additional Ground No. 1

On the facts and in the circumstances of the case, and in law, the penalty proceedings initiated in terms of notice u/s.274 read with section 271 of the Income-tax Act, 1961 dated 18.03.2014 is bad in law inasmuch the said notice does not specify for which limb of section 271 (1)(c) penalty proceedings had been initiated, and consequently, the impugned penalty order is also bad in law. The appellant, therefore, prays that the impugned penalty order be quashed.

2. Additional Ground No. 2

On the facts and in the circumstances of the case, and in law, the impugned penalty order is bad in law inasmuch as the Ld. Assessing Officer finally imposed penalty for furnishing of inaccurate particulars of income whereas the charge made out against the appellant in the relevant assessment order was for both concealment of particulars of income and furnishing inaccurate particulars of such income. The appellant, therefore, prays that the impugned penalty order be quashed."

3. The common issue raised by the assessee in the additional grounds of appeal is of technical and legal in nature and the assessee has challenged the order of AO in imposing penalty under section 271(1)(c) of the Act on the basis of a notice which does not specify the particular limb whether the penalty is for concealment of income or for furnishing of inaccurate particulars of income.

4. After hearing both the parties and perusing the material on record, we observe that the issue is purely of a technical and legal in nature and assessee is well within its rights to file the additional grounds at this stage even. The case of the assessee is also supported by the decision of the Hon'ble Supreme Court in the case of National Thermal Power Corporation vs. CIT 229 ITR 383 (SC). After perusing the facts on record, we observe that the admission of additional grounds does not involve any further verification of facts or records and therefore the same are being admitted and adjudicated in the following paras.

5. The facts in brief are that the AO while passing the penalty order under section 143(3) of the Act dated 18.03.2014 initiated penalty proceedings for both the charges i.e. for furnishing of inaccurate particulars of income and for concealment of income to evade taxes. The notice dated 18.03.2014 issued under section 274 read with section 271 of the Act was issued in a standard format without striking off irrelevant/inappropriate words or one of the two limbs on which the penalty was proposed to be levied. Thereafter, the penalty order was passed imposing a penalty of Rs.32,16,074/- for concealment of income and also for furnishing of inaccurate particulars of income. The said legal issue by the assessee is being raised by way of additional grounds for the first time before this Bench.

6. The Ld. A.R. submitted before the Bench that the AO has issued the penalty notice dated 18.03.2014 under section 274 read with section 271 of the Act in a mechanical manner showing therein that there is no application of mind at all as the AO has not struck off the irrelevant/inappropriate words or redundant part of the notice thereby depriving the assessee of fair and reasonable opportunity to deal with the specific charge on which the penalty was proposed to be levied. The Ld. A.R. while referring to the assessment order and penalty order and also the penalty notice submitted before the Bench that the two limbs i.e. furnishing of inaccurate particulars of income and concealment of income are two different and mutually exclusive limbs and penalty can not be imposed on both the limbs simultaneously. The Ld. A.R. in defence of his argument relied on the following decisions:

- i. Meherjee Cassinath Holdings Pvt. Ltd. Vs ACIT , ITA No. 2555/Mum/2012 dated 28.04.2017
- ii. Jehangir HC Jehangir, ITA No. 1261/Mum/2011 dated 17.05.2017
- iii. M/s. Wadhwa Estate & Developers India Pvt. Ltd., ITA No.2158/Mum/2016 dated 24.02.2017
- iv. Shri Samson Perinchery, ITA Nos. 1154 of 2014, 953 of 2014, 1097 of 2014 & 1226 of 2014 dated 05.01.2017 (Hon'ble Bombay High Court)
- v. CIT Vs M/s. SSA's Emerald Meadows, (2016) 242 Taxman 180( SC)
- vi. CIT Vs M/s. SSA's Emerald Meadows, ITA No. 380 of 2015 dated 23.11.2015 ( Karnataka)
- vii. CIT Vs Mr. Samsan Perinchery, ITA No. 1154 and other of 2014 dated 5.01.2017 (Hon'ble Bombay High Court)

The Ld. A.R. finally submitted before the Bench that the order of the Ld. CIT(A) may kindly set aside and AO be directed to delete the penalty in view of the ratio laid down by the jurisdictional and other courts and also the co-ordinate benches of the Tribunal as stated above.

7. The Ld. D.R., on the other hand, relied heavily on the orders of the lower authorities and also the jurisdictional High Court in the case of Earthmoving Equipment Service Corporation vs. DCIT (2017) 84 taxmann.com 51 (Mum.-Trib.) wherein it has been held that the penalty can not be deleted merely on the basis of defects pointed out by the Ld. A.R. in the notice. The Ld. D.R. also relied on the decision of the Jurisdictional High Court in the case of Maharaj Garage & Co. vs. CIT Nagpur 85 taxmann.com 86 (Bombay) and prayed before the Bench that since there is no merit in the submissions of the Ld. A.R. and the appeal of the assessee may be dismissed by setting aside the order of the Ld. CIT(A).

8. We have heard the rival submissions of both the parties and perused the material on record including the decisions cited by the rival parties and also the written submissions of the Ld.

Departmental Representative. After perusal of the notice issued under section 274 read with section 271(1)(c) of the Act a copy of during the hearing and is placed on records, we observe that AO has not deleted the inappropriate/redundant part in the notice thereby not specifying the charge on which the penalty was proposed to be levied. Thus, we find merit in the contentions of the Ld. A.R. that assessee was deprived of a reasonable and fair opportunity to effectively respond to and deal with the issue of imposition of penalty. In our opinion, the issue is squarely covered by the decisions of the jurisdictional high court in the case of CIT Vs Shri Samson Perincherry (Supra). So far as the arguments of Ld. D.R. that in Earthmoving Equipment Service Corporation vs. DCIT (supra) the decision rendered in the case of Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Kar. -HC) was not followed, we observe that the coordinate bench in the case of Jeetmal Choraria vs. ACIT in ITA No.956/Kol/2016 A.Y. 2010-11, came to the conclusion that this is factually in correct. The another decision relied upon by the Ld. D.R. in the case of Maharaj Garage & Co. vs. CIT (supra), has been distinguished by the co-ordinate bench of the Tribunal in Mrs Indrani Sunil Pillai Vs ACIT ITA No.1339/M/2016 A.Y. 2010-11 that the decision was rendered on different context of quantum penalty proposed to be levied and not with reference to doing away with the show cause notice as contemplated under section 274 of the Act and therefore judgment of the Hon'ble Bombay High Court can not be read out of context or any manner to mean that there is no need for mentioning specific limb of section 271(1)(c) of the Act. After considering all the facts and the ratio laid down in the various decisions as

discussed above ,we hold that the penalty as levied by the AO is bad in law as AO has failed to strike off the inappropriate/redundant word on the notice. Accordingly, we dismiss the appeal raised by the Revenue.

9. Since we have allowed the appeal of the assessee on legal issue, the issue is not decided on merits.

10. In result the appeal of the assessee is allowed.

**Order pronounced in the open court on 30.04.2019.**

**Sd/-  
(Ram Lal Negi)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 30 04.2019.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.