

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

**BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER  
AND  
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**ITA No.138/RPR/2016  
Assessment Year : 2008-09**

Roopa Nankani, Prop. M/s. Maa Sheetala Filling Station, SH-7, Bemetara Road, Khapri, Distt. Durg (CG).	<b>Vs.</b>	ITO, Ward-1, Bhilai (CG).
<b>PAN : ADGPN5842E</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri R. B. Doshi, Adv.  
Department by : Shri Sanjay Kumar, JCIT  
Date of hearing : 15-05-2019  
Date of pronouncement : 16-05-2019

**ORDER**

**PER DR. MITHA LAL MEENA, AM :**

This appeal is filed by the assessee against the order of the CIT(A)-II, Raipur (CG) dated 23.03.2016 relating to assessment year 2008-09.

2. The effective ground of appeal raised by the assessee is as under :-

*“1) On the facts and in the circumstances of the case, Commissioner of Income-tax (Appeals) erred in confirming action of Assessing Officer in levying penalty u/s 271(1)(c) of Rs.31,300/-.”*

3. At the outset, ld. counsel for the assessee drew our attention to the show-cause notice issued u/s 274 r.w.s. 271 of the Act dated 12.10.2010 (APB, Pg. No.7). He contended that the aforesaid show-cause notice did not specify the nature of default i.e. whether the penalty is levied for concealment of income or for furnishing of inaccurate particulars of income, as the Assessing Officer imposed the penalty in this case on account of concealment of income or furnishing of inaccurate particulars of income on the basis of agreed additions by the assessee regarding the shortage diesel claimed by the assessee.

4. The ld. counsel further contended that the Assessing Officer has neither brought on record any material facts to establish that the assessee has either concealed the income or furnished the inaccurate particulars of income. The ld. counsel further submitted that the particulars furnished by the assessee regarding the shortage of diesel in the relevant financial year have not been inaccurate or false. The ld. counsel has also stated that the Assessing Officer has not established that the assessee has concealed any business income in the return of income thereof. In support of the case of the assessee, ld. counsel relied on the various judicial pronouncements on this issue. In support, he

relied on the coordinate regular bench order in the case of “Manoj Kumar Agrawal vs. DCIT” vide ITA No.124/RPR/2015 for the assessment year 2005-06 dated 13.08.2018 (Copy placed on record).

5. The Id. DR for the Revenue, on the other hand, heavily relied on the orders of the authorities below.

6. Heard. On the similar facts of no specific charge the coordinate bench in the case of “Manoj Kumar Agrawal vs. DCIT” (supra) has deleted the entire penalty levied by Assessing Officer. The relevant paras 5 to 6 of the said order of the Tribunal (supra) are extracted hereunder :-

*“5. We have considered the rival arguments made by both the sides and perused the material available on record. A perusal of the notice issued u/s 274 r.w.s. 271 shows that the inappropriate words in the said notice has not been struck off i.e. the notice does not specify under which limb of section 271(1)(c) the penalty proceedings had been initiated i.e. whether for concealment of income or for furnishing of inaccurate particulars of income. We find the Hon’ble Karnataka High Court in the case of M/s SSA’S Emerald Meadows (supra) has observed as under :-*

*“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 OF 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.”*

*6. We find the SLP filed by the Revenue has been dismissed by the Hon'ble Apex Court. Further, the various Benches of the Tribunal following the above decisions are cancelling the penalty so levied by the Assessing Officer and confirmed by the ld. CIT(A) on account of non-striking of the inappropriate words from the notice issued u/s 274 r.w.s. 271 of the Act. Since in the instant case, the Assessing Officer has not struck off the inappropriate words in the notices issued u/s 274 r.w.s. 271, therefore, the notice does not specify under which limb of section 271(1)(c) the penalty proceedings had been initiated i.e. whether for concealment of income or for furnishing of inaccurate particulars of income. Therefore, the penalty proceedings become bad in law. We, therefore, set-aside the order of the ld. CIT(A) and direct the Assessing Officer to cancel the penalty so levied. The appeal filed by the assessee is accordingly allowed.”*

7. Considering the above referred decision of the Tribunal (supra), we are of the view that such penalty is unsustainable in law legally. It is a settled legal proposition that the Assessing Officer is under obligation to specify the appropriate limb of clause (c) of section 271(1) of the Act at the time of initiation as well as at the time of levy of penalty. In view of the above deliberation on this issue, without going into the merits of the case, we set-aside the order of the CIT(A) and direct the Assessing Officer to delete the entire

penalty imposed by him. Accordingly, the ground raised by the assessee is allowed on legal issue.

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

Order pronounced in the open Court on this 16<sup>th</sup> May, 2019.

**Sd/-**  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

**Sd/-**  
(DR. MITHA LAL MEENA)  
ACCOUNTANT MEMBER

Dated: 16-05-2019.

*Sujeet*

*Copy of order to: -*

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

By Order

//True Copy//

Sr. Private Secretary  
ITAT, Raipur