

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. R.K PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.5205,5207&5208/Del/2016
Assessment Year: 2008-09, 2010-11 & 2011-12

Sanjay Mittra G-25, Green Park, New Delhi PAN No. AAGPM2907G (APPELLANT)	Vs	DCIT Central Circle-26 New Delhi (RESPONDENT)
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Appellant by	Sh. Naveen ND Gupta, CA Sh. Ashu Goel, CA
Respondent by	Sh. S. S. Rana, CIT(DR)

Date of hearing:	06/05/2019
Date of Pronouncement:	22/05/2019

ORDER

PER R.K. PANDA, AM:

1. The above three appeals filed by the assessee are directed against the separate orders dated 03.08.2016 of the CIT (A)-29, New Delhi relating to A. Y. 2008-09, 2010-11 and 2011-12 respectively. For the sake of convenience, these were heard together and are being disposed of by this common order.

2. Levy of penalty u/s. 271 (1) (c) of the IT Act by the Assessing Officer and upheld by the CIT (A) for all the above three years is the only issue raised by the assessee in the respective grounds of appeal.

3. Facts of the case, in brief, are that the assessee is an individual and filed return of income for the respective assessment years the details of which are as under :-

A. Y. 2008-09	Rs.26,03,718/-
A. Y. 2010-11	Rs.46,93,437/-
A. Y. 2011-12	Rs.46,34,558/-

4. A search and seizure operation u/s 132 of the IT Act was carried out at Dalmia group of cases on 20.01.2012 and 27.10.2012 and the premises of the assessee was also covered in the said search. In response to notice u/s. 153 (A), the assessee filed return of income for all the three years and the Assessing Officer completed the assessment u/s. 153 (A) r/w section 143 (3) of the IT Act for the above three years on 31.03.2004, the details which are as under :-

A.Y. 2008-09	Rs.33,17,670/-
A. Y. 2010-11	Rs.61,47,000/-
A. Y. 2011-12	Rs.54,86,360/-

5. The assessee did not prefer any appeal against the additions made by the Assessing Officer. Subsequently, the Assessing officer initiated penalty proceedings u/s 271 (1) (c) of the IT Act. Rejecting the various explanations given by the assessee and observing that assessee has concealed his income by furnishing inaccurate particulars, the Assessing Officer levied penalty of Rs.2,42,638/- for assessment year 2008-09, Rs.4,49,151/- for A.Y.2010-11 and Rs.3,40,435/- for A. Y.2011-12. In appeal Ld. CIT(A) upheld the penalty so levied.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. The Ld. Counsel for the assessee, at the outset, referred to the copy of show cause notice u/s. 274 r/w. 271 (1) (c) for all the three years, copies of which are placed at page 1 to 6 of the paper book and submitted that these are only printed forms and the Assessing Officer has not at all struck off the inappropriate words from the said notice. Therefore, it is not understood as to under which limb of provision of section 271(l)(c) the Assessing Officer has levied penalty since the said show-cause notice issued u/s 274 does not specify the charge against the assessee as to whether it was for concealing the particulars of income or for furnishing inaccurate particulars of income. Therefore, the

penalty order passed u/s. 271 (1) (c) in pursuance to the said notice deserves to be set aside. For the above proposition, he relied on the following decisions :-

- i. *SSA 'S Emerald Meadows 242 Taxman 180.*
- ii. *Dilip N Shroff, 291ITR 519.*
- iii. *Manjunatha Cotton & Ginning Factory, 359 ITR 565.*
- iv. *Samson Perinchery, 392 ITR 4.*
- v. *Sahiwal Investment & Trading Co., ITA No.4913/Del/2015 dated 18.07.2018.*
- vi. *Dr. Sarita Milin Davare, 184 TTJ 9.*
- vii. *Jeetmal Choraria, 91 taxmann.com 311.*
- viii. *Shri Sachin Arora, ITA No.1 18/Agra/2015 dated 19.12.2017.*

8. Referring to the following decisions, he submitted that the show-cause notice u/s 274 is a mandatory notice without which the initiation of penalty proceedings would become non-est in the eye of the law and the charge should be specific in said notice. In absence of the same, the notice will be invalid even if there is specific charge in assessment order and penalty order passed by the Assessing Officer

- i. *Shri Sachin Arora, ITA No. 118/Agra/2015 dated 19.12.2017.*
- ii. *Dr. Sarita Milind Davare, 184 TTJ 9.*
- iii. *Pennzoil Quaker State India Ltd., ITA 7386/Mum/2014 dated 12.01.2018.*
- iv. *Kwality Ltd., ITA No. 150/Kol/2017 dated 04.04.2018.*

9. Referring to the decision of the Tribunal in assessee's own case for A. Y. 2009-10 vide ITA No.5206/Del/2016 order dated 01.10.2018 he submitted that under identical circumstances the penalty so levied by the Assessing Officer and upheld by the CIT(A) has been cancelled by the Tribunal. He accordingly submitted that this being a covered matter in favour of the

assessee, the order of the CIT(A) be set aside and the Assessing Officer be directed to cancel the penalty for all the three years.

10. The Ld. DR on the other hand strongly supported the order of the Id. CIT(A). Referring to the decision of the Hon'ble Madras High Court in the case of Sundaram Finance Ltd. vs. CIT reported in 403 ITR 407, he submitted that the Hon'ble High Court in the said decision has held that where notice did not show nature of default, it was a question of fact. The assessee had understood the purport and import of notice and hence no prejudice was caused to the assessee. The Hon'ble High Court while referring to this decision has considered the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton & Ginning Factory reported in 359 ITR 565. The SLP filed by the assessee has been dismissed by Hon'ble Supreme Court reported in (2018) 99 taxmann.com 152.

11. Referring to the decision of the Hon'ble Bombay High Court in the case of CIT vs. Smt. Kaushalya reported in 216 ITR 660 he submitted that the Hon'ble High Court in the said decision has held that mere mistake in language used or mere non-striking off

of inaccurate portion cannot by itself invalidate the notice u/s 274 of the I.T. Act. It was accordingly held that the penalty orders passed by the ITO for assessment years 1968-69 to 1969-70 were perfectly valid and there was no justification for quashing the same on ground of absence of jurisdiction. He also relied on the following decisions to the proposition that mere non-striking off of inappropriate words does not invalidate the penalty proceedings.

- (1) Trimurti Engineering Works Vs. ITO 138 ITD 189
- (2) Hybrid Rice International (P) Ltd. Vs. CIT (ITA No.- 285/Del/2007)
- (3) Earthmoving Equipment Service Corporation Vs. DCIT 166 ITD 113 (Mumbai)
- (4) DCIT Vs. Shah Rukh Khan 93 taxman.com 320 (Mumbai)
- (5) Dhanraj Mills Ltd. Vs. ACIT (ITA No.3830 & 3833/Del

12. The Ld. Counsel for the assessee in his rejoinder submitted that if two views are possible on an issue, the view which is favourable to the assessee has to be followed. For the above provision, he relied on the decision of the Hon'ble Supreme Court in the case of Vegetable Products Limited reported in 88 ITR 192.

13. Referring to following decisions, he submitted that section 292 BB would not come to the rescue of the revenue when the

notice was not in substance and in conformity with or according to the intent of the IT Act :-

- i. Shri Sachin Arora, ITA No. 118/Agra/2015 dated 19.12.2017.
- ii. Dr. Sarita Milind Davare, 184 TTJ 9.
- iii. Shri K. Prakash Shetty, ITA No.265 to 267/2014 dated 05.06.2014.

14. We have considered the rival arguments made by both the sides and perused the orders of the authorities below and perused the material available on record. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case levied penalty u/s. 271 (1) (c) of the IT Act which has been upheld by the CIT(A). It is the submission of the Ld. Counsel for the assessee that when the inappropriate words in the notice issued u/s. 274 r/w 271 (1) (c) have not been struck off and notice does not specify under which limb of the provisions, the penalty u/s. 271 (1) (c) has been initiated, therefore, the penalty so levied by the Assessing Officer and upheld by the CIT(A) is not sustainable.

15. We find merit in the arguments of the Ld. Counsel for the assessee. We find the Tribunal in assessee's own case vide ITA No. 5206/Del/2016 order dated 01.10.2018 for A Y. 2009-10 has decided identical issue and cancelled the penalty so levied by the

Assessing Officer and upheld by the CIT(A) by observing as under :-

15. We have considered the rival arguments made by both the sides and perused the material available on record. We have also considered the various decisions cited before us. We find the only issue to be decided in the grounds of appeal is regarding the sustainable of penalty levied u/s 271(1)(c) when the inappropriate words in the notice issued u/s 274 r.w.s. 271 have not been struck off. A perusal of the notice issued u/s 274 r.w.s. 271 dated 31.03.2004 shows that the inappropriate words in the said notice have not been struck off and it is "H y/ a printed notice. Even the last line of the said notice only speaks of section 271 and does not even mention of section 271(1)(c) of the I.T. Act. We find an identical issue had come up before this Bench of the Tribunal in the case of Sahiwal Investment & Trading co. vs. ITO vide ITA No.4913/Del/2015 for assessment year 2006-07 order dated 18.07.2018 to which both of us parties. We find the Tribunal in the said decision while allowing the additional ground filed by the assessee has decided the issue in favour of the assessee by observing as under :-

"12. Additional Ground No. (ii) is relating to absence of specific charge pointing out in the notice. It is pertinent to note here that the penalty order is based on furnishing of inaccurate particulars but the notice is not specifying exactly on which limb, the penalty u/s 271(1)(c) has been initiated. From the notice elated 30.06.2013 produced, by the Ld. AR during the hearing, it can be seen that the Assessing Officer, was not sure under which limb of provisions of Section 271 of the Income Tax Act, 1961, the assessee is liable for penalty. The issue is squarely covered by the decision of the Hon'ble Supreme Court in case of M/s SSA' Emerald Meadows. The extract of the decision of the Hon'ble Karnataka High Court in M/s. SSA' Emerald Meadows are as under which was confirmed by the Hon'ble Apex Court:

"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 ITA No. 4913/Del/2015 decision of the Division Bench of this Court rendered in the case of COMMISSIONER OF INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359ITR 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."

Thus, Additional Ground No. (ii) of the assessee's appeal is allowed. Since the inception of the notice issued u/s 271(l)(c) has become null and void, there is no need to comment on merit of the case. The Penalty u/s 271(l)(c) of the Act is quashed. "

15. Since in the instant case also the inappropriate words in the penalty notice has not been struck off and the notice does not specify as to under which limb of the provisions, the penalty u/s 271(l)(c) has been initiated, therefore, we are of the considered opinion that the penalty levied u/s 271(l)(c) is not sustainable and has to be deleted. Although the Id. DR has relied on various decisions to the proposition that mere non-striking off of the inappropriate words will not invalidate the penalty proceedings, however, all these decisions are of non-jurisdictional High Court decisions. The decision of the Delhi Bench of the Tribunal relied on by the ld. DR is prior to the decision of the Hon'ble Karnataka High Court in the case of SSA's Emerald Meadows (surpa) where the SLP filed by the Revenue has been dismissed. Since there is no decision of the Jurisdictional High Court on this issue, therefore, we find merit in the argument of the ld. Counsel for the assessee that if two views are available on a particular issue, the view which is favourable to the assessee has to be followed in the light of the decision of the Hon'ble Supreme Court in the case of Vegetabel Products Limited (supra). We, therefore, set aside the order of the ld. CIT(A) and direct the Assessing Officer to cancel the penalty so levied.

16. In the result, the appeal filed by the assessee is allowed.''

16. Since the facts of the impugned appeals are identical to the facts of the case decided by the Tribunal in assessee's own case for A. Y. 2009-10, therefore, following similar reasoning we cancel the penalty levied by the Assessing officer and upheld by the CIT(A) since the inappropriate words in the notices issued for all the above three years have not been struck off and these are only printed notices. The grounds raised by the assessee are accordingly allowed.

17. In the result, all the three appeals filed by the assessee are allowed.

Order pronounced in the open court on 22.05.2019.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Neha

Date:- 22.05.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(R.K PANDA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	15.05.2019
Date on which the typed draft is placed before the dictating Member	15.05.2019
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	22.05.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	