

**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.3648/M/2016  
Assessment Year: 2003-04**

M/s. Sony DADC Manufacturing (India) Pvt. Ltd., C-106, Trans Thane Creek, MIDC Industrial Area, Pawane Village, Navi Mumbai – 400 705 <b>PAN: AACCS1614B</b>	Vs.	Assistant Commissioner of Income Tax, Range-11(1), Room No.439, Aayakar Bhavan, M.K. Road, Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Neeraj Sheth, A.R.  
Revenue by : Shri Chaudhary Arunkumar Singh, D.R.

Date of Hearing : 30.04.2019  
Date of Pronouncement : 16.05.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 05.02.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2003-04.

2. The only issue raised by the assessee in the various grounds of appeal is regarding the upholding the action of AO by Ld. CIT(A) in levying penalty under section 271(1)(c) of the Act. The assessee has challenged the penalty on various grounds on legal issue as well as on merits.

3. The facts in brief are that the penalty was initiated in the assessment order framed under section 143(3) read with section 254 of the Act on 21.03.2014 wherein the penalty u/s 271(1)(c) of the Act has been initiated for both the limbs i.e. for furnishing of inaccurate particulars of income as well as for concealment of income as has been stated in para 4.5, 5.5 & 6.5 of the assessment order dated 21.03.2014. Besides , the notice under section 274 read with section 271(1)(c) of the Act was issued on 21.03.2014 without striking off inappropriate or redundant part of the notice. In other words, the notice was issued in a standard format for concealment of particulars or for furnishing of inaccurate particulars of income. Thereafter, the penalty was levied under section 271(1)(c) vide order dated 23.09.2014 by invoking Explanation 1 and 4 to section 271(1)(c) of the Act.

4. The Ld. CIT(A) also dismissed the appeal of the assessee after taking into account the submissions and contentions raised during the appellate proceedings and hence the assessee is in appeal before us.

5. The Ld. A.R. vehemently submitted before the Bench that the order passed by the AO under section 271(1)(c) of the Act dated 23.09.2014 is invalid and bad in law for the reason that AO initiated penalty proceedings in the assessment order passed under section 143(3) dated 21.3.2014 for filing of inaccurate particulars of income as well as for concealment of income and thereafter the notice under section 274 read with section 271 dated 21.3.2014 was issued without mentioning therein the particular limb on which the penalty was proposed to be levied. In other words, the notice was issued in a mechanical manner

without application of mind as the AO failed to strike off the inappropriate words in the notice. Thus the penalty notice was issued under both the limbs i.e. for concealment of particulars of income and also for furnishing of inaccurate particulars of income. Thereafter, the Ld. A.R. further stated that the penalty order passed under section 271(1)(c) dated 23.09.2014, the AO levied the penalty for concealment of particulars of income which is blatantly wrong and against the ratio laid down by the various judicial forums. In defence of his argument, the Ld. A.R. relied on the following case laws:

- CIT vs. SSA's Emerald Meadows (SC) 73 taxmann.com 248 dated 5.8.2016
- Mrs. Piedade Perinchery (BomHC) ITANo. 1310 of 2014 dated 10.01.2017
- Shri Samson Perinchery vs. CIT (Bom HC ) 392 ITR 4 dated 05.01.2017
- CIT vs. SSA's Emerald Meadows (Kar HC) 73 taxmann.com 241 dated 23. 11. 20 15
- CIT vs. Manjunatha Cotton & Ginning Factory 35 taxmann.com 250 (Karnataka)
- K.M. Bhatia vs. CIT 62 TAXMAN 430 (GUJ.)
- CIT vs. Lakhdhir Lalji 85 ITR 77 (GUJ.)
- Pr.CITvs.BaisettyRevathi(APHC)ITANo684of2016dated13.7.2017
- Shri S. Narendrakumar & Co. vs. ACIT- ITA No.7334/Mum/2016 dated 22.03.2019
- ACIT vs. BhushanKamalNayanVora [2017] 60 ITR(T) 82 (Mumbai -Trib.)
- Orbit Enterprises vs. ITO (ITAT Mumbai) ITA 1596& 1597 /M/2014 dated 01.09.2017
- Jehangir HC Jehangir vs. ACIT - ITA No. 1261/Mum/201 1 dated 17.05.2017
- Meherjee Cassinath Holdings (P.) Ltd. vs. ACIT (Mumbai Trib.) dated 28.04.2017
- Prince Consultancy (P.) Ltd. vs. DCIT [2017] 54 ITR(T) 334 (Mumbai -Trib.)
- Eon Aviation Pvt Ltd vs. DCIT (Mum ITAT) 301 I/M/2016
- Dharni Developers vs. ACIT [2015] 61 taxmann.com 208 (Mumbai -Trib.)
- CMS Info System Pvt Ltd Vs ACIT ITA No. 5391 of 2017(Mum Tri)
- Quikr India Pvt Ltd. Vs DCIT ITA No. 1046 of 2017(Mum Tri)

6. The Ld. D.R., on the other hand, relied on the order of authorities below by submitting that the order passed by AO under section 271(1)(c) was as per the provisions of the Act and was rightly upheld by the Ld. CIT(A). The Ld. D.R. submitted that the penalty proceedings were initiated by the AO in the assessment order for furnishing of inaccurate particulars of income and for concealment of income. Thereafter, the notice

under 274 read with section 271(1)(c) of the Act was issued wherein both the limbs of the penalty were mentioned and thus there was no defect whatsoever in the said notice. Thereafter, the penalty order dated 23.09.2014 was passed for concealment of particulars of income by invoking exp 1 and 4 . Since the AO has correctly initiated the penalty proceedings by issuing notice under section 274 read with section 271 and the assessee duly participated in the penalty proceedings and the contentions raised by the assessee were duly considered. Therefore, it is not open to the assessee to claim that no proper opportunity was given as particular limb on which the penalty was proposed to be levied was not mentioned. The Ld. A.R. relied on the following decisions:

1. Union of India vs. Dharmendra Textile Processors (2007) 295 ITR 244
2. RL Traders vs. ITO (2017-TIOL-2583-HC-DEL-IT)
3. CIT vs. Zoom Communication (P) Ltd. (191 taxman 179 (Delhi)/(2010) 327 ITR 510 (Delhi)/(2010) 233 CTR 465
4. CIT vs. Moser Baer India Ltd. (184 Taxman 8 (SC)/(2009) 315 ITR 460 (SC)/(2009) 222 CTR 213
5. CIT vs. Gold Coin Health Food (P.) LTd. (172 Taxman 386 (SC)/(2008) 304 ITR 308 (SC)/(2008) 218 CTR 359)
6. MAK Data P. Ltd. vs. CIT (38 taxmann.com 448 (SC)/(2013) 358 ITR 593 (SC)/(2013) 263 CTR 1
7. B.A. Balasubramaniam & Bros. Co vs. CIT (116 Taxman 842, 236 ITR 977, 157 CTR 556)
8. CIT vs. Gates Foam & Rubber Co (91 ITR 467)
9. Steel Ingots Ltd. vs. CIT (296 ITR 228)
10. CIT vs. Escorts Finance Ltd. (183 Taxman 453 (Delhi)/(2010) 328 ITR 44 (Delhi)/(2009) 226 CTR 105
11. CIT vs. R.M.P. Plasto (P.) Ltd. (184 Taxman 372 (SC)/(2009) 313 ITR 397 (SC)/(2009) 227 CTR 635)
12. K.P. Madhusudhanan vs. CIT (2010) 118 Taxman 324 (SC)/(2001) 251 ITR 99 (SC)/(2001) 169 CTR 489 (SC)

7. The Ld. D.R. also filed the written submissions at the time of hearing.

8. After hearing both the parties and perusing the material on record, we observe that in this case the AO initiated penalty proceedings in the assessment order dated 23.3.2014 for furnishing of inaccurate particulars of income and for concealment of income in stated in para 4.5, 5.5 & 6.5 of the assessment order dated 21.03.2014 by issuing notice under section 274 read with section 271 of the Act dated 21.3.2014 wherein the AO has not mentioned the particular limb under which the penalty was proposed to be levied. In other words, the notice was issued in a standard format without any application of mind and the inappropriate/redundant words were not deleted by the AO. Thereafter, the penalty was imposed for concealment of particulars of income by invoking Exp 1 and 4 to section 271(1)© of the Act. In our opinion, by these acts of the AO in not striking off the inappropriate limb in the notice is clear cut in violation of principle of natural justice as the assessee was deprived of reasonable opportunity to respond and deal with the particular charge on which the penalty was levied. In our view, the penalty order in such a scenario is clearly bad in law and can not be sustained. The case of the assessee is clearly supported by the decision relied upon by the assessee as stated hereinabove in the case of Shri Samson Perinchery vs. CIT (supra) and CIT vs. Mrs. Piedade Perinchery (Bom-HC) (supra) the Hon'ble Bombay High Court has held that where the AO has failed to state particularly the one of the two limbs on which the penalty was proposed to be levied then the penalty order would be bad in law as the assessee was not given proper opportunity

to respond to the charge on which the penalty was levied. The similar ratio has been laid down in the case of CIT vs. SSA SSA's Emerald Meadows (supra)(Kar) which has been affirmed by the Hon'ble Supreme Court in 73 taxman.com 248. We have also perused the written submissions filed by the Ld. D.R. and also the case laws referred by the Ld. D.R. and observe that the ratio laid down in the various decisions as referred to by the Ld. D.R. is not of any help to the revenue in view of issue being covered by the decisions of the Hon'ble Bombay High Court and Hon'ble Apex Court. Accordingly, we hereby direct the AO to delete the penalty.

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

**Order pronounced in the open court on 16.05.2019.**

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

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

Mumbai, Dated: 16.05.2019.

\* 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.