

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.110/Del/2019
Assessment Year: 2010-11**

**ITA No.6739/Del/2018
Assessment Year: 2010-11**

Mohinder Singh Malik, D-13/1, Model Town, New Delhi-1100009 (PAN: ADIPM4183F)	vs	ACIT, Circle 36(1), New Delhi.
Appellant		Respondent

**Assessee by : Shri Ajay Wadhwa Adv.
Ms Ayushi Gupta, CA
Department by: Ms Rinku Singh, Sr. DR**

**Date of hearing : 22.05.2019
Date of pronouncement : 31.05.2019**

ORDER

PER SUDHANSHU SRIVASTAVA, JM :

Both these appeals are preferred by the assessee. ITA 6739/Del/2018 is filed against the order dated 16.11.2015 passed by the Ld. Commissioner of Income Tax (Appeals)-32, New Delhi for assessment year 2010-11 and challenges the dismissal of the assessee's appeal in the quantum proceedings. ITA No. 110/Del/2019 is preferred against the order dated 8.10.2019

passed by the Ld. Commissioner of Income Tax (Appeals)-12, New Delhi {CIT (A)} for assessment year 2010-11 and challenges the confirmation of penalty of Rs. 15,50,000/- imposed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Both these appeals are being disposed of together.

2.0 Brief facts of the case are that the assessee is the proprietor of M/s Saparktel Communications. This firm is engaged in trading of telecom equipment including repairing and maintenance. The return of income was filed declaring income of Rs. 2,13,39,280/-. The return was initially processed u/s 143(1) of the Act and was subsequently selected for scrutiny. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has purchased a product 'FCT 331T' from its sister concern at a rate of Rs. 1,778.85 per piece but was valued at Rs. 1310.66 per piece at the time of valuation of closing stock. The assessee was issued a show cause notice on the issue and, thereafter, considering the reply of the assessee, the closing stock of the product was valued at a price of Rs. 1,778.85 per piece leading to an addition of Rs. 38,08,758/-.

2.1 It was further noticed that the assessee had valued certain other products at nil value. The assessee was issued

show cause notice on this issue also and, thereafter, an addition of Rs. 8,66,268/- was made on this account.

2.2 Further, the Assessing Officer also noticed that the assessee had valued one more product named 'Concorde' at a price of Rs. 1300/- per piece while its opening price was Rs. 1593.06 per piece. The Assessing Officer was not satisfied with the assessee's explanation in this regard also and an addition of Rs.3,80,975/- was made on this account.

2.3 Thus, the total income of the assessee was computed at Rs. 2,63,95,280/-.

2.4 Penalty proceedings u/s 271(1)(c) were initiated on these three additions.

2.5 Meanwhile, the assessee's appeal against the quantum additions was dismissed by the Ld. CIT (A) and the assessee is in appeal in ITA No. 6739/Del/2018 against the confirmation of the quantum by the Ld. CIT (A).

2.6 The AO imposed a penalty of Rs. 15,50,000/- u/s 271(1)(c) of the Act which was also upheld by the Ld. CIT (A). However, the Ld. CIT(A) accepted the assessee's contention that the quantum of penalty was incorrectly computed by the

Assessing Officer and, accordingly, the quantum of penalty was reduced to Rs. 15,16,800/- against which the assessee is now in appeal before this Tribunal (ITAT) in ITA 110/Del/2019 and has raised the following grounds of appeal:-

“1. That on the facts and circumstances of the case and in law, the order dated 08.10.2018 passed by the Ld. Commissioner of income tax- appeals ("CIT (A))" is erroneous and bad in law.

2. The Ld. CIT (A) has erred on facts and in law in confirming the order of the Ld. Assessing Officer ("AO") imposing penalty u/s 271(1)(c) without any basis and without appreciating the fact that the Assessee does not fall under the purview of section 271(1)(c) as there is no concealment or furnishing of inaccurate particulars of income.

3. The Ld. CIT (A) has erred on facts and in law in confirming the order of the Ld. Assessing Officer ("AO") imposing penalty u/s 271 (1)(c) on addition on account of valuation of closing stock on the basis of lower of cost or net realizable value, since the purchases were made by the Assessee from its sister concern.

4. The Ld. CIT(A) has erred on facts and in law in confirming the order of the Ld. Assessing Officer ("AO") imposing penalty u/s 271(1)(c) without considering the net effect of the transaction.

5. That on the facts and circumstances of the case and in law, the penalty notice dated 30.03.2013 is defective as it failed to specify the ground for levy of penalty and amount of penalty and even the AY mentioned is incorrect.

6. That on the facts and circumstances of the case and in law, the penalty notice dated 22.03.2017 is defective as it failed to mention the ground for levy of

penalty and even the amount of penalty was not mentioned.

7. *That on the facts and circumstances of the case and in law, the penalty order dated 31.03.2017 passed by the Ld. AO is defective as it fails to specify the ground for imposing penalty.*

8. *That on the facts and circumstances of the case and in law, the penalty order dated 31.03.2017 passed by the Ld. AO is defective as computation of penalty amount is grossly incorrect.*

9. *The Ld. CIT(A) has erred on facts and in law in confirming the order of the Ld. Assessing Officer ("AO") imposing penalty u/s 271(1)(c) who failed to apply his mind while passing the penalty order dated 31.03.2017 as the order talks of deduction under section 801C which is not applicable to the Assessee.*

10. *That on the facts and circumstances of the case and in law, the assessment order dated 30.03.2013 passed u/s 143(3) is defective as it fails to specify the ground for imposing penalty.*

11. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the addition made by the Ld. AO who made the addition without giving an opportunity of being heard which is against the principles of natural justice.*

12. *The Ld. CIT(A) has erred in relying upon various judicial decisions against the Assessee which are unconnected and irrelevant and are distinguishable upon facts and in law.*

13. *That the grounds of appeal are independent and without prejudice to each other.*

14. *The assessee craves leave to add, amend, alter, remove, rescind, forgo or withdraw any of the above grounds of appeal, which are without prejudice to one another, before or at the time of hearing of the appeal in the interest of natural justice."*

3.0 At the outset, the Ld. Authorised Representative (AR) submitted that under instructions from his client, the quantum appeal bearing caption no. 6739/Del/2018 was not being pressed.

4.0 In view of the submission of the Ld. AR that the quantum appeal was not being pressed, the same is dismissed as not pressed.

5.0 With respect to the penalty, the Ld. AR submitted that the assumption of jurisdiction by the Assessing Officer for initiating penalty proceedings was bad in law since no specific charge had been mentioned in the show cause notices issued vide notices dated 30.3.2013 and 22.03.2017 issued u/s 274 r/w 271(1)(c) of the Act. He drew our attention to pages 64 and 68 of the Paper Book filed by the assessee and pointed out that the irrelevant portions had not been crossed out in both the notices and, therefore, it was amply clear that the Assessing Officer had not specified the charge as to whether the penalty proceedings were for concealment of income or for furnishing inaccurate particulars of income. The Ld. AR submitted that in the first notice dated 30.03.2013, irrelevant clauses had not been struck off and further even the assessment year for which the penalty

proceedings were being initiated was not mentioned. With respect to the second notice dated 22.03.2017, it was submitted that no ground for levy of penalty was mentioned in the said notice. The Ld. AR also drew our attention to the penalty order passed by the Assessing Officer and submitted that in Para 5.1, it was mentioned that the assessee had concealed his income whereas in Para 6 of the same order, penalty had been levied for furnishing inaccurate particulars of income. It was submitted that, thus, it was amply clear that there was complete non-application of mind by the Assessing Officer while passing the penalty order. It was further submitted that the Hon'ble Apex Court in CIT vs. SSA's Emerald Meadows (2016) 73 taxmann.com 248 (SC) had upheld the judgment of the Hon'ble High Court of Karnataka in CIT vs. SSA's Emerald Meadows reported in (2016) 77 taxmann.com 241 (Karnataka) and had dismissed the appeal filed by the revenue wherein the Hon'ble Karnataka High Court had followed another judgment of the Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 wherein it had been held that notice issued by the Assessing Officer under section 274 read with section 271(1)(c) was bad in law as it did not specify under which

limb of section 271(1)(c) penalty proceedings had been initiated i.e. whether for concealing particulars of income or for furnishing of inaccurate particulars of income. The Ld. AR submitted that this was a jurisdictional defect which could not be cured and, therefore, the penalty was not sustainable.

6.0 In response, the Ld. Sr. Departmental Representative (DR) submitted that in this particular case, both the charges were attracted and that the assessee had concealed his income as well as furnished inaccurate particulars of income. It was also submitted that in some cases, charges may overlap and, therefore, the penalty could not be deleted simply on the ground that the charges were not specified in the penalty notice. It was also submitted that these quantum additions pertain to difference in valuation of closing stock *vis-à-vis* purchases made by the assessee from its sister concern and, therefore, it was a clear cut case of concealment of income as well as of furnishing inaccurate particulars of income. While arguing for upholding of the penalty, the Ld. Sr. DR placed reliance on the orders of both the lower authorities.

7.0 We have heard the rival contentions and have also perused the material on record. It is evident from

the both the notices u/s 274 r.w.s. 271 of the Act for the impugned year that the Assessing Officer has not specifically mentioned as to under which limb of Section 271(l)(c) of the Act the penalty proceedings had been initiated by him, i.e., whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Hon'ble High Court of Karnataka in the case of CIT vs. Manjunatha Cotton & Ginning Factor, reported in 359 ITR 565 (Kar) has, under identical facts, held as under -

"(p) Notice under section 274 of the Act should specifically state the grounds mentioned in Section 271(l)(c), i.e., whether it is for concealment of income or for furnishing of inaccurate particulars of income.

(q) Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law."

7.1 The said above-said judgment of the Hon'ble High Court of Karnataka in the case of CIT vs. Manjunatha Cotton & Ginning Factor (supra) has been followed by the Hon'ble High Court of Karnataka in the case of Commissioner of Income Tax vs. SSA's Emerald Meadows, reported in (2016) 73 taxmann.com 241 (Kar)

and the relevant paragraphs of the said judgment read as under-

"2. This appeal has been filed raising the following substantial questions of law,

Whether, omission of assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.s. 271(i)(c) is bad in law and invalid despite the amendment of Section 271 (1 B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same ?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued under Section 274 without taking into consideration the assessment order when the assessing officer has specified that the 'assessee has concealed particulars of income?'

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(l)(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 (l)(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 CIT v.

Manjunatha Cotton & Ginning Factory [2013] 359ITR 565/218 Taxman 423/35 taxmann.com 250 (Kar.).

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.

7.2 Further, the SLP filed by the Revenue against the judgment of the Karnataka High Court in the case of Commissioner of Income Tax vs. SSA's Emerald Meadows (supra) was dismissed by the Hon'ble Supreme Court of India. Therefore, respectfully following the judgment of the Hon'ble Karnataka High Court as above-mentioned we are of the considered view that the Assessing Officer is required to 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 for furnishing of inaccurate particulars of income. From the perusal of the notices, it is clear that the Assessing Officer has not specified as to under which limb of the section the penalty was imposable. The notices, in fact, are in the standard *pro forma* wherein the irrelevant clauses have not been struck off. This indicates non application of mind on the part of the Assessing Officer

while issuing the penalty notices. Thus, in the circumstances and facts of the case, the penalty proceedings initiated by the Assessing Officer are bad in law and deserve to be deleted. Accordingly, the impugned order is set aside and the AO is directed to delete the penalty.

8. In the final result, ITA 6739/Del/2018 stands dismissed and ITA 110/Del/2019 stands allowed.

Order pronounced in the open court on 31.05.2019.

Sd/-

**(G.D. AGRAWAL)
VICE PRESIDENT**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 31st MAY, 2019
'GS'

Copy forwarded to: -

- 1) Appellant
- 2) Respondent
- 3) CIT(A)
- 4) CIT
- 5) DR

By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
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	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	