

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 837/DEL/2016
[A.Y 2009-10]

Shri Sanjay Goel
13/28, 3rd Floor
West Patel Nagar
New Delhi

Vs.

The I.T.O.
Ward 47(3)
New Delhi

PAN No: AAKPG 3108 K

[Appellant]

[Respondent]

Date of Hearing : 06.06.2019
Date of Pronouncement : 20.06.2019

Assessee by : Shri Amit Goel, CA
Shri Nippun Mittal, CA

Revenue by : Ms. Ashima Neb, Sr DR

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:-

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax [A] - 16, New Delhi dated 21.10.2014 pertaining to A.Y 2009-10.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the levy of penalty of Rs. 5,29,436/- imposed u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short].

3. The representatives of both the sides were heard at length. The case records as well as judicial decisions relied upon by both the parties were carefully perused.

4. Briefly stated the facts of the case are that during the course of assessment proceedings, the A.O observed that the assessee had purchased a residential house at Greater Noida at a total investment of Rs. 40.89 lakhs. Subsequently, the Assessing Officer, not convinced with the explanation tendered by the assessee with regard to the advance received from Shri Ram Charan Agarwal as token money for transfer of rights in residential plot, imposed penalty of Rs. 5,29,346 u/s 271(1)(c) of the Act.

5. The ld. counsel for the assessee furnished a written synopsis and further contended that notice issued by AO u/s 274 r.w.s. 271(1)(c) of the Act was on standard proforma in which inappropriate words and

paragraphs were neither struck off nor deleted. Thus, the assessing officer authority was not sure as to whether he had proceeded on the basis that the assessee had either concealed its income or had furnished inaccurate particulars. Thus, the notice so issued is not in compliance with the requirement of the particular section and therefore it is a vague notice, which is attributable to a patent non-application of mind on the part of the assessing authority.

6. The ld. counsel for the assessee contended that the courts have held that in the notice under section 274 r.w.s. 271 of the ACt, the AO has to specify the charge on which he intends to levy penalty. This aspect of the matter has been consistently reiterated by the Hon'ble High Courts from time to time. The ld. counsel for the assessee further submitted that there can be no doubt that penalty u/s 271 (1)(c) of the Act is levied for concealing particulars of income or for furnishing inaccurate particulars of such Income, which are the two limbs of this provision. In other words, it is only when the authority invested with the requisite power is satisfied that either of the two events existed in a particular case that proceedings u/s. 271(1)(c) of the Act are initiated. This pre-requisite should invariably be evident from the notice issued u/s. 274 r.w.s. 271 of the Act, which is the jurisdictional

notice, for visiting an assessee with the penal provision. In the present case, neither the assessee nor anyone else could make out as to whether the notice u/s. 274 r.w.s. 271 of the Act was issued for concealing the particulars of income or for furnishing inaccurate particulars of such income. There are a catena of judgments highlighting the necessity for identifying the charge for which the assessee is being visited and in all those decisions, the Hon'ble Courts have repeatedly held that where the jurisdictional notice u/s 274 r.w.s. 271 of the Act, is vague, similar to the one in the present case, the consequent levy cannot be sustained.

7. In this connection, reliance was placed upon the judgment of the Hon'ble Karnataka High Court In the case of **CIT v. Manjunatha Cotton and Ginning Factory & others (2013) 35 taxmann.com 250 (Karnataka)** in which the facts are similar. One of the substantial questions on which the appeal was filed by the revenue was:

“Whether the notice issued under section 271(l)(c) in the printed form without specifically mentioning whether the proceedings are initiated on the ground of concealment of income or on account of furnishing of inaccurate particulars is valid and legal? ”

8. While answering the above in favour of the assessee, the Hon'ble Court held as under:

“61. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnish ins of inaccurate particulars of total income under clause (c). Concealment furnishing inaccurate particulars of income are different Thus, the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The apex court in the case of Ashok Pai reported in 120071 292 ITR 11 (SC) at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of Manu Engineering Works reported in f19801122 ITR 306 (GTJJ) and the Delhi High Court in the case of CIT v. Virgo Marketing P Ltd reported in f2008 171 Taxman 156 has held that levy of penalty has to be dear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment then the notice has to be appropriately marked Similar is the case for furnishing inaccurate particulars of income, "(p) Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c) i.e. whether it is for concealment of income or for furnishing of incorrect particulars of income. The

standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind.”

9. Per contra, the ld. DR furnished written submissions and relied on a catena of decisions in support of the confirmation of levy of penalty.

10. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. The ld. AR for the assessee company has challenged the impugned order contending that show-cause notice issued by the AO is not a valid notice to initiate the penalty proceedings as the assessee company has not been made aware if it has concealed the particulars of income or has furnished inaccurate particulars of such income. It is settled principle of law that the penalty cannot be imposed merely on the ground that additions made in the income of the assessee has been confirmed rather to proceed with imposition of penalty u/s 271(1)(c), the AO has to prove that there was concealment of particulars of income or assessee has furnished inaccurate particulars of such income.

11. Bare perusal of the notice issued to the assessee u/s 271(1)(c) of the Act goes to prove that assessee has not been called upon to explain if he has concealed the particulars of income or furnished inaccurate particulars of such income. Hon'ble Karnataka High Court in case of ***CIT vs. Manjunatha Cotton and Ginning Factory & Ors.*** (supra) dealt with the identical issue threadbare and came to the following conclusion :-

“63. In the light of what is stated above, what emerges is as under:

- a) Penalty under Section 271(1)(c) is a civil liability.*
- b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.*
- c) Willful concealment is not an essential ingredient for attracting civil liability.*
- d) Existence of conditions stipulated in Section 271(1)(c) is a sine qua non for initiation of penalty proceedings under Section 271.*
- e) The existence of such conditions should be discernible from the Assessment Order or order of the Appellate Authority or Revisional Authority.*

f) Ever if there is no specific finding regarding the existence of the conditions mentioned in Section 271(1)(c), at least the facts set out in Explanation 1(A)

& (B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.

g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(l)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1(B).

h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Appeals and the Commissioner.

i) The imposition of penalty is not automatic.

j) Imposition of penalty even if the tax liability is admitted is not automatic.

k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have

escaped from tax net and as opined by the assessing officer in the assessment order.

l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bonafide, an order imposing penalty could be passed.

m) If the explanation offered, even though not substantiated by the assessee, but is found to be bonafide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.

n) The direction referred to in Explanation IB to Section 271 of the Act should be clear and without any ambiguity.

o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the Assessing Authority.

p) Notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income

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

r) *The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.*

s) *Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.*

t) *The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.*

u) *The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared as invalid in the penalty proceedings."*

12. Therefore, following the law laid down by Hon'ble High Court, we are of the considered view that when the assessee has not been specifically made aware of the charges levelled against it as to whether there is a concealment of income or furnishing of inaccurate particulars of income on his part, the penalty u/s 271(1)(c) of the Act is not sustainable. The case law relied upon by the ld. DR are not applicable to the facts and circumstances of this case in the face of the decisions rendered by the Hon'ble High Court in ***Manjunatha Cotton and Ginning Factory & Ors.*** (supra).

13. The law laid down in ***Manjunath Cotton & Ginning Factory (Supra)*** stands approved by Hon'ble Supreme Court in ***CIT Vs. SSA's Emerald Meadows [supra]***. In view of what has been discussed above and considering the judicial pronouncements, we are of the considered view that AO/CIT (A) have erred in levying/confirming the penalty of u/s 271(1)(c) of the Act which is not sustainable in the eyes of law, hence ordered to be deleted. Consequently, the grounds of appeal raised by the assessee are hereby allowed.

14. In the result, the appeal filed by the assessee in ITA No. 837/DEL/2016 is allowed.

The order is pronounced in the open court on 20.06.2019.

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Sd/-

**[SUDHANSHU SRIVASTAVA,]
JUDICIAL MEMBER**

Dated: 20th June, 2019

VL/

Copy forwarded to:

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

Asst. Registrar

ITAT, New Delhi

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	
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