

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. 343/DEL/2015
[A.Y 2004-05]

M/s Duro Traders Private Ltd
G-57-58, 1st Floor
Sector - 18, Noida

Vs.

The Addl. C.I.T
Noida Range
Noida

PAN No: AABCD 9104 G

[Appellant]

[Respondent]

Date of Hearing : 04.06.2019
Date of Pronouncement : 20.06.2019

Assessee by : Shri R.K. Gupta, Adv

Revenue by : Ms. Ashima Neb, SrDR

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:-

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax [A], Noida dated 17.11.2014 pertaining to A.Y 2004-05.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the levy of penalty 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 carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules. Judicial decisions relied upon were carefully perused.

4. Briefly stated, the facts of the case are that the assessee, during the AY 2005-06 sold industrial property for Rs. 90,00,000/- in which the assessee has shown total investment in the form of construction and development cost at Rs. 67,45,811/-. During the course of assessment proceedings for A.Y. 2005-06 it was observed by the Assessing Officer from the documents obtained from Noida Authority that the certificate of architect placed with application for completion certificate shows the date of completion as 6.4.2004. Assessment was completed on total income of Rs. 30,17,073/- and penalty proceedings were initiated u/s 271(1)(c) of the Act. Accordingly, the Assessing Officer imposed penalty of Rs. 6,00,000/-.

5. Before us, the ld. counsel for the assessee submitted that the AO considered the investment of Rs. 15,24,801/- which stood reduced from Rs. 30,17,073/- as 'Undisclosed Investment' which was duly recorded in the books of accounts of subsequent year i.e. AY 2005-06. Hence, this was not an unaccounted or undisclosed investment. The ld. counsel for the assessee further submitted that the presumptive contention of the Assessing Officer that Rs. 15,24,801/- arrived on the basis that this investment was made in AY 2004-05 but bills of which were accounted for in AY 2005-06 ignoring the fact that the suppliers raised bills in AY 2005-06 for the material supplied in AY 2004-05. The ld. counsel for the assessee concluded by stating that in view of the above facts, the quantum of additions made by the Assessing Officer stands reduced and there is no evidence on record that the investment made in the building is not duly recorded in the books of appellant.

6. The ld. counsel for the assessee submitted that the Assessing Officer issued show cause notice dated 2.2.2012 which reads as under:

“As per records maintained in the office, it is found that the above penalty proceedings are pending and the appellate authority has decided the appeal. Accordingly,

you are hereby given opportunity to show cause as to why penalty u/s 271 (l)(c) should not be levied.

The date fixed for this purpose is 26.2.2012 at 11.30 AM on which date you are hereby required to attend my office personally or through your authorized representative or to file a written reply alongwith all evidences in support of your contention before me on or before the date fixed for hearing positively.

Please note that no further time will be allowed and if there is non-compliance with this notice on the date fixed for hearing, penalty proceedings will be decided on the merits of the case.

Unquote:

7. The ld. counsel for the assessee submitted that the AO issued the show-cause notice dated 2.2.2012 wherein it is not specified whether the penalty proceedings initiated by him are for 'furnishing inaccurate particulars' or 'concealment of income'. The ld. counsel for the assessee relied on the decisions in the case of CIT Vs. SSA's Emerald Meadows **242 Taxmann 180 (SC)** and Manjunatha Cotton and Ginning Factory 359 ITR 565

8. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. The Id. 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 reproduced hereinabove 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 Id. 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. 343/DEL/2015 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	
Date on which the file goes to the Bench Clerk	
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