

**IN THE INCOME TAX APPELLATE TRIBUNAL "D"
BENCH, MUMBAI**

**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI G. MANJUNATHA, AM**

**आयकरअपीलसं./ I.T.A. No.490 & 491/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2000-01 & 2001-02)**

In the matter of;

Roopchand Jain, Flat No. 003, A Wing, Buinding No. D-28, Yogi Nagar, Borivali, Mumbai-400092.	बनाम/ Vs.	ITO 25(2)(4) C-11, 6 th floor, R. No. 602, BKC, Bandra Mumbai-400 051
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. ADCPJ9737E		

अपीलार्थीकीओरसे/ Appellant by	:	Sh. N. M. Porwal, AR
प्रत्यर्थीकीओरसे/ Respondentby	:	Sh. D. G. Pansari, DR

सुनवाईकीतारीख/ Date of Hearing	:	01/05/2019
घोषणाकीतारीख / Date of Pronouncement	:	21.05.2019

आदेश / ORDER

Per Shri Sandeep Gosain, Judicial Member:

The present two appeals filed by the assessee are against the order of Commissioner of Income Tax (Appeals)-44, Mumbai dated 23.02.16 for AY 2000-01 & 2001 & 2002 respectively.

2. Since the issues involved in these two appeals are common, therefore, they have been clubbed, heard together and a consolidated order is being passed for the sake of convenience and brevity.

ITA No. 490/Mum/2017 (AY 2000-01)

3. First of all we take up assessee's appeal in ITA No. 490/Mum/2017 for assessment year 2000-01 as lead case.

4. The solitary ground raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the penalty u/s 271(1)(c) of the I.T. Act on merits as well as legal points.

5. We have heard the counsels for both the parties and we have also perused the material placed on record as well as orders passed by the revenue authorities. While addressing the arguments on merits, Ld. AR had also challenged the legality of the notice issued under section 274 r.w.s. 271 of the Act for initiating of the penalty proceedings under section 271(1)(c) of

the Act for A.Y. 2007-08. A perusal of the notice issued under section 274 r.w.s. 271 of the Act which is at page no. 1 & 2 of the paper book reveals that the AO has not deleted the inappropriate words and parts of the notice, whereby it is not clear as to the default committed by the assessee, i.e. whether it is concealment of particulars of income or furnishing of inaccurate particulars of income that the penalty under section 271(1)(c) of the Act is sought to be levied. In this regard, we find that the Hon'ble High Court of Karnataka in its order in the case of **M/s Manjunatah Cotton & Ginning Factory in ITA No. 2546 of 2005 dated 13.12.2012**, relied on by the assessee, has held that such a notice, as has also been issued in the case on hand, is invalid and the consequential penalty proceedings are also not valid. The relevant portion of their Lordships judgement at paras 59 to 62 thereof are extracted hereunder for reference: -

“59. As the provision stands, the penalty proceedings can be initiated on various ground set therein. If the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is

initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation-1 or in Explanation-1(B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty on him as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in Section 271(1)(c) do not exist as such he is not liable to pay 6 ITA No.7602/Mum/2014(AY-2005-06) TCFC Finance Ltd. penalty. The practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under Section 274

should satisfy the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended if the show cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee. 60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose

penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the 7 ITA No.7602/Mum/2014(AY-2005-06) TCFC Finance Ltd. order of penalty which, when passed, was not sustainable. 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 furnishing 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 292 ITR 11 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 reported in 122 ITR 306 and the Delhi High Court in the case of VIRGO MARKETING reported in 171 Taxman 156, has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Thom, 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. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind.”

6. The conclusion drawn therein by their Lordships at para 63 thereof and particularly at p) to s) thereof are as under:

“63

a)

p) Notice under section 274 of the Act should specifically state the ground 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 the limb and finding the assessee guilty of another limb is bad in law.”

7. It may be mentioned that in this regard, no contrary decision of the Hon'ble Apex Court or the Hon'ble Bombay High Court has been brought to our notice or placed before us for consideration. Therefore, respectfully following the decision of the Hon'ble Karnataka High Court in the case of **Manjunatha Cotton & Ginning Factory reported in (2013) 359 ITR 565 (Kar)**, decision of Hon'ble Bombay High Court in the case of **CIT Vrs Samson Perinchery** dated 05.01.2017, we hold that the

notice issued under section 274 r.w.s. 271 of the Act dated 30.10.12 for A.Y. 2007-08 for initiating penalty proceedings under section 271(1)(c) of the Act in the case on hand is invalid and consequently, the penalty proceedings are also invalid. Since the very basis for the levy of penalty under section 271(1)(c) of the Act has been held to be invalid, we are of the view that the other grounds of appeal, raised by the assessee against the merits of the levy of penalty under section 271(1)(c) of the Act require no adjudication at this stage.

8. Consequently, the appeal filed by the assessee is **allowed**.

I.T.A. No. 491/Mum/2017 (AY 2001-02)

9. Now we take up assessee's appeal in I.T.A. No.491/Mum/2017. Since we have decided the appeal filed by the assessee in ITA No. 490/Mum/2017 for AY 2000-01 on merits. Therefore, following our own decision in ITA No. 490/Mum/17, we apply the same findings in the present appeal in order to maintain judicial consistency which is applicable mutatis mutandis.

10. In the net result, both the appeals filed by the assessee stands **allowed** with no order as to cost.

Order pronounced in the open court on 21st May 2019.

Sd/-

(G. Manjunatha)

Sd/-

(Sandeep Gosain)

लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member
मुंबई Mumbai; दिनांक Dated : 21.05.2019
Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai