

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. Nos.175-180/Coch/2019
Assessment Years : 2004-05 to 2009-10

M/s. Rajadhani Hotels & Tourist Enterprises Pvt. Ltd., Sumpthripathi, Rajadhani Buildings, East Fort, Thiruvananthapuram-695 023. [PAN:AABCR 3017N]	Vs.	The Assistant Commissioner of Income-tax, Central Circle, Trivandrum.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri Thomas Joseph, CA
Revenue by	Smt. A.S. Bindhu, Sr. DR

Date of hearing	29/07/2019
Date of pronouncement	01/08/2019

ORDER

Per CHANDRA POOJARI, AM:

These appeals filed by the assessee are directed against the common order of the CIT(A)-III, Kochi dated 20/02/2019 and pertain to the assessment years 2004-05 to 2009-10.

2. The assessee has raised the following common grounds of appeals:
 1. The order of the authorities below is against law and facts of the case and hence unsustainable.
 2. The learned first appellate authority erred in treating the estimated addition as concealed income and on that presumption has imposed penalty for concealment of income.

3. The learned first appellate authority ought to have seen that the assessment was completed on estimating the gross receipts and when estimation is resorted to the question of concealment does not arise at all.

4. The learned first appellate authority ought to have seen that the first appellate authority has given an ad-hoc reduction of 10% from the difference in the gross receipts pointed out by the assessing authority. This itself would show that the assessment was done on the basis of estimation and not on the basis of any definite omission or concealment found out from the records of the appellant.

5. The learned first appellate authority erred in ignoring the fact that the penalty was initiated for furnishing inaccurate particulars of income and imposed for concealment of income.

6. The learned first appellate authority erred in ignoring the law that the show cause notice u/s 274 is defective as it does not spell out the grounds on which penalty was sought to be imposed, whether for concealing particulars of income or furnishing of inaccurate particulars of income.

And such other grounds, arguments or points that may be submitted, urged or enlarged at the time of hearing.

3. The assessee has raised the additional grounds of appeals as follows:

1. The learned first appellate authority erred in ignoring the fact that the penalty was initiated for furnishing inaccurate particulars of income and imposed penalty for concealment of income.

2. The learned first appellate authority erred in ignoring the law that the show cause notice u/s 274 is defective as it does not spell out the grounds on which penalty was sought to be imposed, whether for concealing particulars of income or furnishing of inaccurate particulars of income.

3.1 The assessee has also filed a petition for admission of the additional grounds of appeals as follows:

"The above appeals have been posted for hearing on 03-06-2019. In the appeal filed before the first appellate authority the following grounds of appeals were left out to be raised. These grounds are legal grounds and all the

necessary material relating to these grounds are already on record. No new facts are to be investigated. The petitioner is given to understand that this ground is very crucial to the adjudication of the case and he would be put to irreparable loss if the ground is not admitted. Though the issues relating to these grounds were raised in the written submission made before the first appellate authority, the same were not considered for adjudication. These grounds could not be raised earlier on account of the ignorance of the petitioner as to the importance of this ground."

3.2 We have heard the rival submissions and perused the record. We find bona fide reasons in the act of the assessee in not raising the additional ground on an earlier occasion by placing reliance on the judgment of the Supreme Court in the case of National Thermal Power Corporation Ltd. vs. CIT (229 ITR 383) wherein it was held that Tribunal has the discretion to allow or not to allow additional ground to be raised for the first time before the Tribunal. Accordingly, we admit the additional ground for adjudication.

4. Coming to the merits of the additional ground, the Ld. AR drew our attention to the notice issued for imposing penalty u/s. 274 of the Act which reads as follows:

*NOTICE UNDER SECTION 274 READ WITH SECTION 271(I)(c) OF THE
INCOME-TAX ACT, 1961*

PAN.AABCR3017N/CC-1/TVM/2011-12

*Office of the Assistant Commissioner of
Income-tax, Central Circle-1,
'Devikripa", Pettah, Pallimukku,
Trivandrum- 695 024.*

Dated: 27.12.2011

To
M/s. Rajadhant Hotels & Tourist Enterprises.Pvt Ltd.,

*"Sumpthriphi" Rajadliani Buildings,
East Fort, Trivandrum.*

Whereas in the course of proceedings before me for the assessment year it appears to me that you;-

"have without reasonable cause failed to comply with a notice under section 143(1)/143(2) of the Income Tax Act, 1961".

"have concealed the particulars of your income or furnished inaccurate particulars of such income"

You are hereby requested to appear before me at 10.30PM on and show cause why an order imposing a penalty on you should not be made under section 271 of the Income-tax Act, 1961 . If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative you may show cause in writing on or before the said date which will be considered, before any such order is made under section 271.

sd/-

*(Assistant Commissioner of Income-tax)
Central Circle-1, Trivandrum*

The Ld. AR submitted that the show cause notice u/s. 274 was defective as it does not spell out the grounds on which penalty was sought to be imposed, whether for concealing particulars of income or furnishing of inaccurate particulars of such income. it was submitted that the Assessing Officer had not struck off the irrelevant portion of the penalty notice which was not applicable to the assessee and does not clearly mention whether he proposed to levy penalty for concealment of income or furnishing of inaccurate particulars of income.

4.1 The Ld. AR placed reliance on the judgment of the Karnataka High Court in the case of the CIT & Ors. Vs. Manjunatha Cotton and Ginning Factory & Ors. (2013)

(359 ITR 565). The Ld. AR also relied on the judgment of the Supreme Court in the case of CIT & Anr. vs. M/s. SSA's Emerald Meadows in CC No.11485/2016 dated 05/08/2016 and the decision of the ITAT, Delhi Bench in the case of M/s. ABR Auto Pvt. Ltd. Vs. ACIT in ITA No. 6236/DEL/2015 dated 04/12/2017. The Ld. AR also relied on the following judgments:

1. Shri Parashuramasa R. Habib vs. ACIT (dated 27/012/2019 (ITAT,Bangalore)
2. CIT vs. M/s. L&T Finance Ltd. in ITA No. 1363/2015, 1359/2015 dated 04/06/2018 (HC Mumbai)
3. M/s.Gayathri Exports vs. ACIT (2018) Taxcorp (DT) 71783 (HC Karnataka)
4. Pr. CIT vs. Kulwant Singh Bhatia (2018) TaxCorp (DT) 71757 (HC-MP)
5. Pr. CIT vs. Smt. Baisetty Revathi (2017) TaxCorp (DT) 69460 (HC-AP)
6. Dr. Esmail Sait vs. ITO in ITA No.494/Coch/2016 dated 14/08/2018 (ITAT, Cochin)

5. The Ld. DR submitted that it was only a technical mistake which was not to be considered and the appeal should be decided on merit.

6. We have heard the rival submissions and perused the record. We have carefully gone through the notice issued u/s. 274 r.w.s. 271 of the Act narrated in para 4 of this order. As seen from the above notice issued u/s. 274 of the Act, the Assessing Officer has not struck out the irrelevant portion of the notice. In other words he has not specified whether he is levying penalty for concealment of

particulars of income or furnishing of inaccurate particulars of income. As held by the Karnataka High Court in the case of CIT & Anr. vs. M/s. SSA's Emerald Meadows (2015) (11) TMI 1620 that the notice issued by the Assessing Officer u/s. 274 r.w.s 271(1)(c) is to be bad in law as it did not 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 furnishing of inaccurate particulars of income. This view was confirmed by the Supreme Court in the same case, i.e., CIT & Anr. vs. M/s. SSA's Emerald Meadows reported in (2016) (8) TMI 1145.

7. In view of the above discussion, we are inclined to hold that the penalty proceedings initiated by the AO is void ab initio and allow the appeal of the assessee. Since we have quashed the penalty proceedings itself, we refrain from adjudicating the other grounds of appeal raised by the assessee.

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

Order pronounced in the open court on 1st August, 2019

sd/-

(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 1st August, 2019

GJ

Copy to:

1. M/s. Rajadhani Hotels & Tourist Enterprises Pvt. Ltd., Sumpthripathi, Rajadhani Buildings, East Fort, Thiruvananthapuram-695 023.
2. The Assistant Commissioner of Income-tax, Central Circle, Trivandrum.
3. The Commissioner of Income-tax(Appeals)-III, Kochi.
4. The Commissioner of Income-tax, Central, Kochi.

I.T.A. No.175-180/Coch/2019

5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin