

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.2550/Del./2016
(ASSESSMENT YEAR : 2011-12)**

M/s. Vashulinga Finance Pvt. Ltd., vs. ITO, Ward 17 (2),
1004, Chiranjiv Towers, New Delhi.
43, Nehru Place,
New Delhi – 110 019.

(PAN : AABCV4461G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri K.P. Garg, CA

REVENUE BY : Ms. Naina Soin Kapil, Senior DR

Date of Hearing : 27.08.2019

Date of Order : 13.09.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Vashulinga Finance Pvt. Ltd. (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 08.02.2016 passed by the Commissioner of Income - tax (Appeals)-9, New Delhi qua the assessment year 2011-12 on the grounds inter alia that :-

“1. The ld. CIT(A) has erred on facts and in law in confirming the penalty imposed by ld. AO u/s 271(1)(c) for a sum Rs.7,36,512/-.

2. *The ld. CIT(A) has erred on facts and in law in dismissing the legal grounds that no valid and proper notice had been issued u/s 274 initiating the penalty proceedings u/s 271(1)(c).*

3. *The ld. CIT(A) has erred on facts and in law in dismissing in sub-silentio the legal grounds of the assessee that the penalty proceedings in the absence of recording proper satisfaction is contrary to law and void ab-initio.*

4. *The ld. CIT(A) has erred on facts and in law in holding that the ITO is not required to record any satisfaction which is discernible.*

5. *The ld. CIT(A) has erred on facts and in law in holding that proper opportunity was granted by AO as is clear from the penalty order.*

6. *The Id. CIT(A) has erred on facts and in law in stating that the assessee had deliberately claimed excess bad debts and furnished inaccurate particulars and as such holding that penalty is exigible on the facts and circumstances of the case.”*

2. Briefly stated the facts necessary for adjudication of the issue at hand are : On the basis of assessment order framed under section 143 (3) of the Income-tax Act, 1961 (for short ‘the Act’) at an income of Rs.20,17,610/- by way of making disallowance of Rs.19,70,000/- on account of claiming excessive bad debts written off, the penalty proceedings were initiated under section 271(1)(c) of the Act. Declining the contentions raised by the assessee, Assessing Officer (AO) levied the penalty to the tune of Rs.7,36,512/- @ 100% of the tax sought to be evaded.

3. Assessee carried the matter by way of an appeal before the ld. CIT (A) who has confirmed the penalty by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, the assessee has debited an amount of Rs.78,80,000/- to profit & loss account against the bad debts written off, however while computing the total income the assessee has added this income to total income and deducted an amount of Rs.19,70,000/- as bad debts. It is also not in dispute that the penalty has been levied by the AO u/s 271(1)(c) of the Act on the ground that while computing taxable income, assessee had made excessive claim of Rs.19,70,000/- in order to reduce tax liability, thus willfully claimed excessive bad debts written off.

6. In the backdrop of the aforesaid facts and circumstances of the case, order passed by the lower authorities and arguments addressed by the authorized representatives of both the parties, the sole question arises for determination in this case is:-

“as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income during assessment proceedings?”

7. Ld. AR for the assessee contended that in order to initiate the penalty proceedings, the AO has failed to specify in the show-cause notice issued u/s 271(1)(c)/274 of the Act if the assessee has concealed

the particulars of income or has furnished inaccurate particulars of income and relied upon the decisions of *Hon'ble Karnataka High Court in case of CIT vs. Manjunatha Cotton and Ginning Factory-359ITR 565, CIT vs. SSA's Emerala Meadows -73 taxmann.com 241 (Kar.) (Revenue's SLP dismissed in 242 taxman 180) and Hon'ble High Court of Delhi in Pr. CIT vs. Sahara India Life Insurance Company Ltd. in ITA 475/2019 order dated 02.08.2019.*

8. In order to proceed further, we would like to peruse the notice issued by AO u/s 274 read with section 271(1)(c) of the Act to initiate the penalty proceedings which is extracted as under for ready perusal:-

“NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961.

***Income Tax Office,
New Delhi.***

Dated: 21.03.2014

To

***M/s Vashulinga Finance P. Ltd.
1004, Chiranjiv Tower,
43, Nehru Place, New Delhi***

Whereas in the course of proceedings before me for the assessment year 2011-12 it appears to me that you:-

- ***Have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961 dated.....***

- *Have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2,3,4 and 5.*

You are hereby requested to appear before me at 11.30 AM/PM on 9.4.2014 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 representatives 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/-
Assessing Officer,
Income-tax Officer,
Ward 17 (2), New Delhi.”*

9. Bare perusal of the notice issued u/s 274 read with section 271(1)(c) of the Act, extracted above, in order to initiate the penalty proceedings against the assessee goes to prove that the AO himself was not aware / sure as to whether he is issuing notice to initiate the penalty proceedings either for “concealment of particulars of income” or “furnishing of inaccurate particulars of such income” by the assessee rather issued vague and ambiguous notice by incorporating both the limbs of section 271(1)(c). When the charge is to be framed against any person so as to move the penal provisions against him/her, he/she is required to be specifically made aware of the charges to be leveled against him/her.

10. Hon’ble High Court of Karnataka in case of *CIT vs. Manjunatha Cotton and Ginning Factory* (supra) while deciding the identical issue held that when the AO has failed to issue a specific show-cause notice to the assessee as required u/s 274 read

with section 271(1)(c), penalty levied is not sustainable. The operative part of the judgment is reproduced as under:-

“59. As the provision stands, the penalty proceedings can be initiated on various ground set out 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 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 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 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 T Ashok Poi v. CIT [2007] 292 ITR 11 /161 Taxman 340 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 CIT v. Manu Engg. [1980] 122 ITR 306 and the Delhi High Court in the case of CIT v. Virgo Marketing (P) Ltd. [2008] 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. 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. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind. ”

11. Hon'ble Apex Court in case of *CIT vs. SSA's Emerala Meadows - (2016) 73 taxmann.com 248 (SC)* while dismissing the SLP filed by the Revenue quashing the penalty by the Tribunal as

well as Hon'ble High Court on ground of unspecified notice has held as under:-

“Section 274, read with section 271(1)(c), of the Income-tax Act, 1961 - Penalty - Procedure for imposition of (Conditions precedent) - Assessment year 2009-10 - Tribunal, relying on decision of Division Bench of Karnataka High Court rendered in case of CIT v. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565/218 Taxman 423/35 taxmann.com 250, allowed appeal of assessee holding that notice issued by 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 concealment of particulars of income or furnishing of inaccurate particulars of income - High Court held that matter was covered by aforesaid decision of Division Bench and, therefore, there was no substantial question of law arising for determination - Whether since there was no merit in SLP filed by revenue, same was liable to be dismissed - Held, yes [Para 2] [In favour of assessee]”

12. Hon'ble Delhi High Court in case of *Pr. CIT vs. Sahara India Life Insurance Company Ltd.* (supra) while deciding the identical issue held as under :-

“21. The Respondent had challenged the upholding of the penalty imposed under Section 271 (1) (c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) and observed that the notice issued by the AO would be bad in law if it did not specify which limb of Section 271(1) (c) the penalty proceedings had been initiated under i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Karnataka High Court had followed the above judgment in the subsequent order in Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 Taxman.com 241 (Kar) , the appeal against which was dismissed by the Supreme Court of India in SLP No. 11485 of2016 by order dated 5th August, 2016.”

13. Following the decisions rendered in the cases of *CIT vs. Manjunatha Cotton and Ginning Factory, CIT vs. SSA's Emerala Meadows and Pr. CIT vs. Sahara India Life Insurance Company Ltd.* (supra), we are of the considered view that when the notice issued by the AO is bad in law being vague and ambiguous

having not specified under which limb of section 271(1)(c) of the Act, the penalty proceedings initiated u/s 271(1)(c) are not sustainable. Even the AO has failed to apply his mind at the time of recording satisfaction at the time of framing assessment to initiate the penalty proceedings u/s 271(1)(c) of the Act as to under which limb of section 271(1)(c) i.e. for concealing particulars of income or furnishing inaccurate particulars of such income, penalty proceedings have been initiated rather written vague and ambiguous satisfaction recorded that, “penalty proceedings u/s 271(1)(c) are initiated”. So, initiating penalty proceedings on the basis of vague and ambiguous satisfaction rather “no satisfaction” are bad in law and as such not sustainable.

14. Apart from the discussion made in the preceding paras, we have noticed that no addition whatsoever has been made in the assessment order rather while initiating the penalty proceedings, AO assumed the addition and has levied the penalty which is otherwise not sustainable in the eyes of law. Consequently, penalty levied by the AO and confirmed by the Id. CIT (A) is deleted and the appeal filed by the assessee is hereby allowed.

Order pronounced in open court on this 13th day of September, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 13th day of September, 2019/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-9, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.