

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

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.598/Del./2016  
(ASSESSMENT YEAR : 2007-08)**

**ITA No.599/Del./2016  
(ASSESSMENT YEAR : 2008-09)**

**ITA No.600/Del./2016  
(ASSESSMENT YEAR : 2009-10)**

M/s. Sudhir Transformers Ltd.,  
31, Bommasandra Industrial Area,  
Bangalore.

vs. ACIT, CC – 4,  
New Delhi.

**(PAN : AAACI4556J)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Karan Kumra, CA  
REVENUE BY : Smt. Naina Soin Kapil, Senior DR

Date of Hearing : 03.09.2019

Date of Order : 24.09.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Since common questions of facts and law have been raised in the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, M/s. Sudhir Transformers Ltd. (hereinafter referred to as the 'assessee') by filing the present appeal sought to

set aside the impugned order dated 20.01.2016, 201.2016 & 01.12.2015 passed by the Commissioner of Income-tax (Appeals)-23, New Delhi affirming the penalty order dated 23.03.2015, 23.03.2015 & 18.03.2014 passed u/s 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'), qua the assessment years 2007-08, 2008-09 & 2009-10 respectively on the identical grounds except the difference in amount inter alia that :-

***“1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the levy of penalty imposed under section 271(1)(c) of the Income Tax Act amounting to Rs.1,40,144/, Rs.3,18,749/- & Rs.1,41,000/- for AYs 2007-08, 2008-09 & 2009-10 respectively.***

***2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that, there was neither furnishing of any inaccurate particulars of income nor could it be validly held that there was any concealment of income on the facts of the case so as to sustain the levy of penalty.***

***2.1 That the learned Commissioner of Income Tax (Appeals) has further erred in law and on facts by failing to appreciate that no satisfaction has been recorded so as to entail the levy of penalty and as such, the order passed by learned assessing officer is bad in law and the penalty sustained is liable to be cancelled.***

***3. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate the basic fact that a sum of Rs.4,16,350/- represented the deduction U/S 43B on account of following:***

**AY 2007-08**

<b><i>Bonus Payable</i></b>	<b><i>- Rs. 83,608/-</i></b>
<b><i>Duties &amp; Taxes</i></b>	<b><i>- Rs. 17,309/-</i></b>
<b><i>Entry Tax Payable</i></b>	<b><i>- Rs.3,12,143/-</i></b>
<b><i>E.S.I.</i></b>	<b><i>- Rs. 3,290/-</i></b>
<b><i>Total</i></b>	<b><i>- Rs.4,16,350/-</i></b>

**AY 2008-09**

<b><i>Bonus Payable</i></b>	<b><i>- Rs.7,42,291/- (7,44,791/- - 2,500)</i></b>
<b><i>ESI</i></b>	<b><i>- Rs. 87,842/-</i></b>
<b><i>Rates &amp; Taxes</i></b>	<b><i>- Rs. 1,300/-</i></b>
<b><i>PF Payable</i></b>	<b><i>- Rs.1,06,341/-</i></b>
<b><i>Total</i></b>	<b><i>- Rs.9,37,774/-</i></b>

**AY 2009-10**

<b>ESI</b>	<b>- Rs. 88,511.66</b>
<b>Provident Fund</b>	<b>- Rs. 68,842.32</b>
<b>Sales CST Silvassa</b>	<b>- Rs.2,54,996.00</b>
<b>Total</b>	<b>- Rs.4,12,349.98</b>

***Deduction u/s 43B were duly disclosed by the appellant company, and there could be no basis much less valid basis to disallow the same and further imposition of penalty in misconceived and unsustainable in law and should be deleted, as such.”***

3. Briefly stated the facts necessary for adjudication of the issue at hand are : On the basis of completed assessment framed under section 143 (3) of the Income-tax Act, 1961 (for short ‘the Act’) read with section 153C vide order all dated 26.12.2011 for AYs 2007-08, 2008-09 & 2009-10, penalty proceedings were initiated u/s 271(1)(c) of the Act on the ground that the assessee has concealed particulars of income and furnished inaccurate particulars of income qua the addition made on account of bonus payable, on account of dues & taxes, on account of entry tax payable and on account of ESI. Declining the contentions raised by the assessee, AO proceeded to levy the penalty of Rs.1,40,350/-, Rs.3,18,749/- & Rs.1,41,000/- for AYs 2007-08, 2008-09 & 2009-10 respectively @ 100% of the tax sought to be evaded.

4. Assessee carried the matter by way of appeals before the Id. CIT (A) who has confirmed the penalties by dismissing the appeals. Feeling

aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

5. We have heard the Id. 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.

6. Undisputedly, additions have been made in these cases on account of disallowance of deductions claimed by the assessee u/s 43B of the Act. It is also not in dispute that the assessee has accepted the additions. It is also not in dispute that the assessee had filed audited balance sheet disclosing all the deductions claimed u/s 43B of the Act.

7. In the backdrop of the aforesaid undisputed facts & circumstances of the case, order passed by the lower revenue authorities and arguments addressed by the Ld. Authorized Representatives of the parties to the appeal, 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 such income during assessment proceedings?”***

8. Ld. AR for the assessee contended that the AO in order to initiate the penalty proceedings 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.*

9. Ld. DR for the Revenue in order to repel the arguments addressed by the Id. AR for the assessee relied upon the orders passed by the AO and the Id. CIT (A).

10. In order to proceed further, we would like to peruse the notice dated 26.12.2011 in all the cases 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.***

*Asstt. Commission of Income Tax,  
Central Circle-25, New Delhi.*

*Dated: 26.12.2011*

*To*

*M/s Sudhir Infra Vidyut Ltd.  
507, International Trade Tower,  
Nehru Place, New Delhi -110 019.*

*Whereas in the course of proceedings before me for the assessment year 2007-08 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 10.30 AM/PM on 20.01.2012 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/-  
Asstt. Commissioner of Income Tax  
Central Circle 25, New Delhi.”*

11. 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.

12. 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. ”*

13. 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]”*

14. 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.”*

15. 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.

16. Even, on merits, it is not in dispute that the assessee has disclosed all the deductions claimed u/s 43B of the Act which leads to the conclusion that there is no concealment, no malafide or false representation as the case may be on the part of the assessee in claiming deductions u/s 43B of the Act and as such, the same cannot be amounted to concealment of particulars of income or furnishing of inaccurate particulars of such income. Merely because of the fact that the deductions claimed by the assessee have been disallowed the provisions contained u/s 271(1)(c) are not attracted.

17. Hon'ble Supreme Court in a case cited as *Reliance Petro Products Pvt. Ltd. – 322 ITR 158 (SC)* while interpreting the provisions contained u/s 271(1)(c) of the Act decided the identical issue in favour of the assessee. Operative part of which is reproduced for ready reference as under :-

*“A glance at the provisions of section 271(1)(c) of the I.T. Act, 1961 suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee.*

*Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271(1)(c) would embrace the detail of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.*

*Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars."*

18. In view of what has been discussed above, we are of the considered view that penalties levied by the AO and confirmed by the Id. CIT (A) in the aforesaid appeals are deleted, hence all the three appeals are allowed.

**Order pronounced in open court on this 24<sup>th</sup> day of September, 2019.**

**Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 24<sup>th</sup> day of September, 2019  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)- 23, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.