

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

BEFORE SHRI M. BALAGANESH (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 1254/MUM/2017
Assessment Year: 2012-13**

Maitreya Plotters & Structures Pvt. Ltd., Pt. Din Dayal Nagar, Vasai (West), Palghar - 401302 PAN: AAFCM9944B	Vs.	The C.I.T. (Appeals)-3, A Wing, 6 th Floor, Ashar IT Park, Road 16Z, Wagle Industrial Estate, Thane - 400604
(Appellant)		(Respondent)

Assessee by : None

Revenue by : Shri J. Saravanan (DR)

Date of Hearing: 27/08/2019
Date of Pronouncement: 20/09/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 04.11.2016 passed by the Commissioner of Income Tax (Appeals)-3 (for short 'the CIT(A), Thane, for the assessment year 2012-13, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the penalty order passed u/s 271 (1) (c) of the Income Tax Act, 1961 (for short the 'Act').

2. The facts in brief are that, the assessee engaged in the business of dealing in agriculture and non agricultural land filed its return declaring nil income after claiming carried forward loss of Rs. 91,67,64,946/-. The AO passed the assessment order u/s 143 (3) of the Act and assessed the total loss amounting to Rs. 91,24,38,170/- after making addition of Rs. 43,26,780/- u/s 68 of the Act. During the course of assessment it was noticed that the assessee had shown current liability amounting to Rs. 7,79,66,87,108/- as booking amount. In order to verify the genuineness of the said transaction, the

AO issued notices to the parties u/s 133 (6) of the Act to the concerned parties. 35 notices were received back un-served from the postal department with the remarks 'not known' 'incomplete address' or 'left'. The total investment shown by the said parties was Rs. 31,19,660/-. In respect of three parties, no reply was received. The total investment shown made by the said parties was Rs. 4,02,400/-. Further the assessee failed to establish creditworthiness in respect of 12 parties. The investment shown made by the said parties was Rs. 8,04,720/-. Hence, the AO asked the assessee to explain as to why the total amount of Rs. 43,26,780/- should not be treated as unexplained cash credit u/s 68 of the Act. The assessee failed to substantiate its claim to the satisfaction of the AO. Accordingly, the AO made addition of the said amount to income of the assessee u/s 68 of the Act.

3. In the first appeal, the Ld. CIT (A) confirmed the addition made by the AO. The AO initiated penalty proceedings u/s 271 (1) (c) of the Act and levied penalty of Rs. 14,03,823/- for concealing the particulars of its income. In the first appeal, the Ld. CIT (A) confirmed the penalty. Against the said action of the Ld. CIT (A), the assessee is in appeal before the Tribunal.

4. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

- “1. The learned CIT (Appeals) was not justified in confirming the order of the learned Dy. CIT levying the penalty of Rs. 14,03,823/- u/s 271 (1) (c) of the Act.
2. The order levying the penalty passed by the learned Dy. CIT and its confirmation by the learned CIT (Appeals) are both illegal, invalid and unjustified.”

5. This case was fixed for hearing on 27.08.2019. However, on the said date, when the case was called out for hearing, none appeared on behalf of the assessee. From the record, we noticed that the assessee did not appear on the last two successive dates fixed for hearing and even no application for adjournment was received. The last notice issued on 08.05.2019 has been received back un-served with the remarks 'left'. Hence, we are of the considered

view that no fruitful purpose would be served in case the appeal is adjourn and fresh notice is issued. We accordingly, decided to dispose of the appeal on the basis of material on record after hearing the Departmental Representative (DR) and asked the Ld. DR to argue on behalf of the revenue.

6. The Ld. DR submitted before us that since the assessee has failed to discharge the onus of establishing the genuineness of the transactions with the alleged investors despite sufficient opportunity granted by the authorities below, the Ld. CIT (A) has rightly confirmed the addition made by the AO u/s 68 of the Act. Moreover, the assessee has not challenged the order passed by the First Appellate Authority in quantum appeal, the assessment order has become absolute. The Ld. DR further submitted that since the assessee has concealed its income by furnishing inaccurate particulars, the Ld. CIT(A) has rightly confirmed the penalty levied u/s 271 (1)(c) of the Act. In the light of the aforesaid facts, the Ld. DR submitted that there is no infirmity in the order passed by the Ld. CIT (A) to interfere with the same.

7. We have gone through the relevant record in the light of the submissions made by the Ld. DR. The Ld. CIT (A) has confirmed the penalty levied u/s 271 (1) (c) of the Act by the AO holding as under:-

“(i) In This case, the initiation of penalty proceedings u/s 271(1)(c) has been discussed in para 5.1, page 4 of the assessment order and accordingly, the AO has rightly levied penalty u/s 271(1)(c) for filing inaccurate particulars of income. In the assessment proceedings, the appellant failed to discharge the onus of proving the cash credit recorded in its books of account as genuine, therefore, the same is added as unexplained cash credit u/s 68 of the Act and the appellant has also not filed an appeal against the assessment order. In the penalty proceedings, in response to show cause notice dtd. 31.08.2015, no one attended, nor any written explanation has been filed, therefore, the AO levied penalty and the same is discussed from Para 5 to 7 of the penalty order.

(ii) *On the other hand, the appellant argued that, in the show cause notices dated 24.03.2015 and 31.08.2015, the AO has not specified whether the penalty was initiated for “concealment of particulars of income” or “furnishing inaccurate particulars of such income”, therefore, the order has been passed without application of mind and hence, bad in law. The appellant has placed reliance in the following judicial decisions*

a) *CIT vs. Manjunath Cotton & Ginning Factory (2013) 35 taxmann.com 250 (Kar)* b) *CIT Bangalore vs. SSA’s Emerald Meadows (2016) 73 Taxmann.com 241 (Kar)* c) *CIT vs. SSA’s Merald Meadows (2016) 73 Taxmann.com 248 (SC).*

(iii) *On the perusal of the submissions and case laws relied upon by the appellant, it is seen that the appellant is arguing on the validity of the notice issued u/s 271 (1) (c) as the AO has not specified in the notice u/s 271 (1) (c), either for concealment of income or furnishing inaccurate particulars.*

In this regard, I do not agree with the contention of the appellant that the notice issued was bad in law on the following grounds that

a) *The appellant has never disputed during the penalty proceedings before the AO and the notice issued u/s 271 (1) (c) has clearly mentioned, either for concealment of income or furnishing inaccurate particulars, therefore, for not specifying the same, cannot be the reason that the notice issued u/s 271 (1) (c) of the Act is bad in law,*

b) *The initiation of penalty proceedings has already been discussed in the assessment order and while passing the penalty order, the AO levied penalty on account of furnishing inaccurate particulars of income thereby concealing true particulars of income. It is a know fact that, in the case of the appellant, penalty is attracted for furnishing inaccurate*

particulars of income, therefore, the notice issued u/s 271 (1) (c) cannot be considered as bad in law on technical ground.

c) Section 271 (1) (c) has been amended retrospectively w.e.f. 1st April, 1989, vide Finance Act, 2008 where Cl. (1B) to S. 271 has been inserted. As per this clause, it is not necessary for the AO to record his satisfaction while initiating penalty proceedings. In the case of the appellant, the AO has already discussed in the assessment order as to why penalty is attracted on account of concealment of income or furnishing inaccurate particulars of income and levied penalty for furnishing inaccurate particulars of income.

(d) In facts, once concealment or furnishing of inaccurate particulars is established at the time of assessment proceedings, there is no requirement in the Act to given reason or record reason for concealment or furnishing inaccurate particulars while issuing notice u/s 271 (1) (c) of the Act. The penalty proceedings cannot be initiated without establishing concealment or furnishing of inaccurate particulars at the time of assessment proceedings, therefore, in the case of appellant, the AO establishes that there were concealment or furnishing inaccurate particulars of income, which justify initiating penalty proceedings.

(e) Reliance is placed on various judicial pronouncements i) In CIT vs. Raj Trading Co. (1996) 217 ITR 208 (Raj) explaining the difference between the two held that the words furnishing inaccurate particulars of income, refer to the particulars which have been furnished by an assessee of income and the requirement of concealment of income is that income has not been declared at all or is not even been recorded in the books of accounts or in a particular case the concealment of the particular of income may be from the books of accounts as well

as from furnished. In the case of the appellant, furnishing of inaccurate particulars of income has been established in the assessment proceedings as the appellant failed to prove the onus that cash credit recorded in the books of accounts is genuine. Therefore, it is not required to specifically mention in the notice issued u/s 271 (1) (c) of the Act.

ii) D.M. Manasvi 86 ITR 557 (SC) held that satisfaction of the concerned tax authority to the effect that the assessee has either concealed the particulars of income or furnished inaccurate particulars of income is the condition precedent for levy of penalty and such satisfaction must be arrived at in the course of any proceeding under the Act. Therefore, in the case of the appellant, in the penalty order passed by the AO has specifically levied penalty for furnishing inaccurate particulars of income.

iv) The case laws relied upon by the appellant are not similar to facts of the case of the appellant, and in the income tax proceedings, each and every case is different, therefore, the decisions relied upon by the appellant does not support its own case.”

8. We have carefully perused the order passed by the authorities below and the submissions made by the assessee during the assessment proceedings and the appellate proceedings. As pointed out by the Ld DR, since, the assessee has not challenged the addition made by the AO, the assessment order has become absolute. During the penalty proceedings, the assessee failed to prove that the explanation offered by it is bona fide and that all the facts material to the computation of its income have been disclosed. So far as the technical issue raised by the assessee before the authorities below is concerned, we agree with the Ld. CIT(A) that the AO has levied penalty for furnishing inaccurate particulars of its income. Moreover, the assessee has participated in the proceedings before the authorities below and no prejudice has been caused to

the assessee. Hence, we uphold the findings of the Ld. CIT(A) and dismiss the appeal filed by the assessee.

In the result, appeal filed by the assessee for assessment year 2012-2013 is dismissed.

Order pronounced in the open court on 20th September, 2019.

Sd/-

(M. BALAGANESH)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 20/09/2019

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai