

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC': NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.920/Del/2019
Assessment Year: 2012-13**

**Shri Bhupender Saini,
H.No.68/143, Bhogarh, Narela,
Delhi.
Delhi.
PAN: BFEPS3281M
(Appellant)**

**vs Income-tax Officer,
Ward – 62(2), New

(Respondent)**

**Assessee by: Shri B.L. Gupta, ITP
Department by: Ms Ekta Vishnoi, Sr. DR**

**Date of Hearing: 17.10.2019
Date of Pronouncement: 30.10.2019**

ORDER

PER NARASIMHA K. CHARY, JM

Aggrieved by the order dated 04.01.2019 passed by the learned Commissioner of Income Tax (Appeals)-18, New Delhi ("Ld. CIT(A)"), the assessee filed this appeal in respect of the Assessment year 2012-13.

2. Brief facts of the case are that the assessee is a civil contractor and filed his return of income on 3/10/2012 for the assessment year 2012-13 declaring an income of Rs.1,89,364/-. Assessment was, however, completed by order dated 11/3/2015 under section 143(3) of the Act at an income of Rs.15,20,597/- by making certain additions to the income of

the assessee. Learned Assessing Officer simultaneously initiated proceedings under section 271(1)(c) of the Act for furnishing of inaccurate particulars of income by the assessee and concluded it by order dated 28/9/2015 with the levy of penalty of Rs.3,16,461/-.

3. Aggrieved by the levy of penalty, assessee preferred an appeal before the Ld. CIT(A) challenging the same stating that the facts on record were not properly considered. It was also challenged on the ground that the Assessing Officer had not struck off one of the limbs out of two, "concealed the particulars of income" or "furnishing inaccurate particulars of income" in the penalty notice, by placing reliance on the decision of the Hon'ble Karnataka High Court reported in CIT vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565.

4. As could be seen from the impugned order, Ld. CIT(A) observed that in a recent case of Sundaram Finance Ltd vs. CIT (2018) 403 ITR 407 (Madras) the decision of the Hon'ble Karnataka High Court in Manjunatha's case (supra) was considered and it was held that where notice did not show the nature of default, it was a question of fact and when the assessee had understood purported import of notice, no prejudice was caused to the assessee. Basing on this, Ld. CIT(A) rejected the contentions of the Ld. AR with regard to the technical default in the notice.

5. Being aggrieved by the findings of the Ld. CIT(A), assessee preferred this appeal stating that the judgement of the Hon'ble Karnataka High Court in the case of Manjunatha (supra) was confirmed by the Hon'ble Apex Court in the case of SSA's Emerald Meadows and

further affirmed by the Hon'ble jurisdictional High Court in the case of Ld. PCIT vs. Sahara India life insurance company in ITA 475/2019 and batch of cases by order dated 2/08/2019 and therefore, the non-striking of one of the limbs out of the two "concealed the particulars of income" or "furnishing inaccurate particulars of income" in the penalty notice would go to the root of the matter and vitiates the assumption of jurisdiction by the learned Assessing Officer to levy any penalty.

6. Per contra, Ld. DR justified the findings of the Ld. CIT(A) basing on the decision of the Madras High Court in the case of Sundaram Finance Ltd vs. CIT (2018) 403 ITR 407 (Madras) and submitted that the Hon'ble Apex Court dismissed the SLP filed by the assessee in this case by order dated 26/10/2018. She submitted that inasmuch as the assessee did not entertain any doubt as to the purported import of the notice he did not question the same before the Assessing Officer and therefore, the assessee is not entitled to any relief in this appeal.

7. We have gone through the record in the light of the submissions made on either side. It is not in dispute that the learned Assessing Officer had not struck off the non-applicable portion about the limb of section 271(1)(c) of the Act as to "concealed the particulars of income" or "furnished inaccurate particulars of income". Assessee is placing reliance on the decision of CIT vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 whereas the revenue is placing reliance on the decision in the case of Sundaram Finance Ltd vs. CIT (2018) 403 ITR 407 (Madras).

8. In the case of *CIT vs Manjunatha Cotton & Ginning Factory*, 359 ITR 565 (Kar). Vide paragraph 60, the Hon'ble Karnataka High Court has held as follows:-

"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."

9. In *Commissioner of Income Tax v. SSA's Emerald Meadows* (2016) 73 taxman.com 241 (Kar) the Hon'ble Karnataka High Court Considered the question of law as to,-

“Whether, omission if assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?”

10. And the Hon’ble High Court answered the same in favour of the assessee observing that:

“The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short ‘the Act’) 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. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of Commissioner Of Income Tax -Vs- Manjunatha Cotton And Ginning Factory (2013) 359 ITR 565. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed.”

11. The Special Leave Petition filed by the Revenue challenging the aforesaid judgement of the High Court was dismissed by the Hon’ble Supreme Court holding :

“We do not find any merit in this petition. The special leave petition is, accordingly, dismissed.”

12. In PCIT vs. Sahara India Life Insurance company Ltd. case ITA No 475/2019 and batch, order dated 02/08/2019, Hon’ble Delhi High Court, upheld the view taken by the Tribunal based on the decision of the Hon’ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra) and SSA’s Emerald Meadows (supra) wherein it was held that the notice issued by the learned Assessing Officer would be

bad in law if it did not specify under 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 for furnishing of inaccurate particulars thereof. Relevant observations of the Hon'ble High Court read that,-

"21. The Respondent had challenging 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 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 judgement 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 of 2016 by order dated 5th August, 2016.

22. On this issue again this court is unable to find any error having been committed by the ITAT."

13. Since the decision of the Hon'ble jurisdictional High Court in the case of Sahara India (supra), is a binding precedent on this Tribunal, while, respectfully following the same, we hold that for the AO to assume jurisdiction u/s 271(1)(c), proper notice is necessary and the defect in notice u/s 274 of the Act vitiates the assumption of jurisdiction by the learned Assessing Officer to levy any penalty. In this case, facts stated supra, clearly establish that the notice issued under section 274 read with 271 of the Act is defective and, therefore, we find it difficult to hold that the learned AO rightly assumed jurisdiction to pass the order levying the penalty. As a consequence of our findings above, we direct the assessing officer to delete the penalty in question.

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

Order pronounced in the Open Court on 30th October, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 30th October, 2019

VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

sd/-

**(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI

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