

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHIR K.N.CHARY, JUDICIAL MEMBER

ITA No. 6468/Del/2016
(Assessment Year: 2009-10)

Late Shri Jaswant Singh Madhok, Through L/H Shri Sandeep Singh Madhok, D-97, Defence Colony, New Delhi PAN: AAAPS3927J (Appellant)	Vs.	ACIT, Central Circle-3, New Delhi (Respondent)
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Assessee by :	None
Revenue by:	Smt Naina Soin Kapil, Sr. DR
Date of Hearing	28/08/2019
Date of pronouncement	20/11/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

01. This is an appeal filed by the assessee against the order of the Id CIT (A)-25, New Delhi dated 29.09.2016 for the Assessment Year 2009-10.
02. The assessee has raised the following grounds of appeal:-
 - “1. That the Id. CIT(A) has erred in sustaining the penalty of Rs.5,26,354/- imposed u/s 271(l)(c) of the Act without appreciating the facts of the case and detailed submissions made by the appellant.
 2. That the Id. CIT (A) has erred in not appreciating the facts of the case by holding that there is no double taxation.
 3. That the Id. CIT (A) has erred in not adjudicating Ground Nos. 2 & 3 raised before him.
 4. That the order imposing penalty is bad in law and void ab initio since in the show cause notice issued u/s 274 read with section 271 the Id. AO has not struck off the irrelevant clause of the notice, meaning thereby the AO has not apprise the assessee about the specific charge, under which assessee has been held guilty of penal action.”
03. Brief facts of the case shows that assessee is an individual. A search and seizure action u/s 132 of the income tax act in case of M/s Jay Polychem India Ltd and its associated initiated on 14/3/2012. Therefore notice u/s 153A of the income tax act was issued on

2/11/2012. Consequent to that assessee filed its return of income declaring income of INR 9 002960/- on 18/12/2012. Assessment u/s 153A read with section 143 (3) of the income tax act was passed on 30/3/2014 determining the total income of the assessee at INR 1 0733189/-. In the assessment / 1730229 was made as most of the expenses incurred through credit cards are nonbusiness in nature and cannot be held as an expenses incurred wholly and relief for the purpose of the business of the assessee or Jay Polychem India Ltd. The learned assessing officer examined the copy of ledger account of the PIL of credit card expenses but failed to submit the basis as to how these expenses are related with the business of that company. According to the AO these expenses were incurred for personal purposes of the directors only. Accordingly same were added as a part with it in the hands of the assessee and penalty proceedings were also initiated. No specific charge was mentioned in the assessment order.

04. The assessee preferred appeal before the learned CIT – A would deleted the disallowance of the credit card expenses of INR 1 81674/- and upheld the disallowance of INR 1 54855/-.
05. Consequent to that show cause notice was also issued to the assessee stating that assessee has concealed the particulars of its true income and furnished inaccurate particulars of its income in terms of explanation to section 271 (1) © of the income tax act.
06. The assessee submitted its reply on 15/3/2016 stating that expenses were incurred wholly and exposure relief for and on behalf of the company and therefore is allowable as business expenditure in the hands of the company. It was further stated that the company has debited these expenses in its books of accounts and claim the same as expenditure. The learned assessing officer held that the reply of the assessee has been considered but not found tenable and acceptable. Therefore he held that assessee has willfully concealed its income within the meaning of section 271 (1) (c) of the income tax act. Subsequently a penalty of INR 5 26354/- was levied by the order dated 23/3/2016. The assessee preferred an appeal before the

learned CIT – A wherein none appeared on behalf of the assessee and therefore an ex parte order was passed dismissing the appeal of the assessee. Therefore assessee is in appeal before us.

07. Despite notice to the assessee none appeared before us, therefore the issue is decided on the merits of the case as per information available on record.
08. The learned departmental representative vehemently supported the order of the lower authorities and stated that the above expenses have been disallowed and therefore it has resulted into a penalty on the assessee.
09. We have carefully considered the rival contention and perused the orders of the lower authorities. The ground number 4 of the appeal of the assessee is that the order imposing penalty is bad in law and void ab initio since in the show was notice issued u/s 274 read with section 271 of the income tax act the learned assessing officer has not struck of the relevant clauses of the notice meaning thereby that the AO has not apprise the issue about the specific charge under which the assessee has been held guilty open elections. The Notice of penalty u/s 274 rws 271 dated has not struck off and the twin charges. In assessment order ld AO has merely mentioned that penalty proceedings u/s 271 (1) (c) are initiated, however there is no satisfaction with respect to any of the twin charges. Further even in the penalty notice the assessing officer has opened both the charges for levy of the penalty. Therefore, there is always confusion in the mind of the taxpayer. Bare perusal of the notice issued u/s 274 read with [section 271\(1\)\(c\)](#) of the Act, 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 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. 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\(l\) \(c\)](#), 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. Based on 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. "

10. Hon'ble Apex Court in case of [CIT vs. SSA's Emerald 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]"

11. 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 of 2016 by order dated 5th August, 2016."

12. Following the decisions rendered in the cases of [CIT vs. Manjunatha Cotton and Ginning Factory](#), [CIT vs. SSA's Emerald 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. Therefore, initiating penalty proceedings based on vague and ambiguous notice is bad in law and as such not sustainable.
13. Consequently, without deciding the issues on merit, on this ground itself , penalty levied by the AO and confirmed by the ld. CIT (A) of Rs 526354/- is deleted and the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 20/11/2019.

Sd/-

(K.N.CHARY)
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 20/11/2019
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating member	
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	