

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.2705/M/2012
Assessment Year: 2004-05**

**ITA No.2706/M/2012
Assessment Year: 2005-06**

M/s.Triumph International Finance India Ltd., Oxford Centre, 10 Shroff Lane, Colaba Causeway, Mumbai – 400 005 PAN: AAACE0308A	Vs.	Asst. Commissioner of Income Tax, Central Circle – 40, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Neelkanth Khandelwal, A.R.
Revenue by : Dr. P. Daniel, D.R.

Date of Hearing : 01.10.2019
Date of Pronouncement : 08.11.2019

ORDER

Per G. Manjunatha, Accountant Member:

These two appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-36, Mumbai both dated 16.03.2012 and they pertain to assessment years 2004-05 & 2005-06. Since, the facts are identical and issues are common, for the sake of convenience, these appeals are heard together and are disposed of by this consolidated order.

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2. The assessee has raised more or less common grounds of appeal in both assessment years. Therefore, for the sake of brevity, grounds of appeal filed for A.Y. 2004-05 are reproduced as under:

“1. The Commissioner of Income-tax (Appeals) - 36 , Mumbai (hereinafter referred to as the CIT(A)), erred in upholding the action of the Assistant Commissioner of Income-tax, Central Circle 40, Mumbai (hereinafter referred to as the Assessing Officer) in levying penalty of Rs 14,17,46,607 under section 271(l)(c) of the Act.

“The appellants contend that on the facts and in the circumstances of the case and in law, the Assessing Officer ought not to have levied the impugned penalty under section 271(l)(c) of the Act.

2. The appellants contend that the CIT(A) has not disposed of the following ground of appeal -

"The Assessing Officer has erred in levying penalty on the basis of income-tax, including surcharge.

The appellants contend that surcharge on income-tax cannot be considered in levying the penalty as the same is not part of "tax" and the CIT(A) ought to have disposed of the said ground of appeal.”

3. The brief facts of the case are that assessee company is engaged in the business of trading in shares and securities filed its return of income for assessment year 2004-05 on 01.11.2004 declaring net loss of Rs.39,76,46,982/-. The case was selected for scrutiny and the assessment has been completed under section 143(3) of the Income Tax Act, 1961 on 08.08.2006, determining the total income at Rs.82,78,455/- by making various additions including bad debts disallowed. The assessee carried the matter in appeal before the Ld. CIT(A). The Ld. CIT(A), for reasons recorded in his appellate order, partly allowed the appeal filed by the assessee. The assessee carried matter in

further appeal before the ITAT. The Tribunal, vide its order dated 19.04.2013 in ITA No.6879/M/2018 partly allowed the appeal filed by the assessee, where it has deleted additions made by the AO towards bad debts in part and set aside the issue of bad debts in respect of Trimp Securities Ltd. amounting to Rs.11,42,56,769/-. Similarly, the ITAT has set aside the issue of provision for bad debts amounting to Rs.97,27,368/-. In so far as additions made by the AO towards decrease in value of stock and prior period expenses, the Tribunal has upheld the findings of the AO.

4. Meantime, the AO had initiated penalty proceedings under section 271(1)(c) of the Income Tax Act, 1961 and called upon the assessee to explain as to why penalty shall not be levied in respect of various additions made during assessment proceedings for furnishing of inaccurate particulars of income and also concealment of income. The AO, after considering the submissions of the assessee, held that the assessee has concealed/furnished inaccurate particulars of its income in respect of bad debts written off, provision for bad debts, write off of bad loans, loss on decrease in value of stock and additions towards prior period expenses and accordingly levied penalty of Rs.14,17,46,607/- which is 100% of tax sought to be evaded. The assessee carried the matter in appeal before the first appellate authority. The Ld. CIT(A) for detailed reasons recorded in his appellate order dated 16.03.2012 confirmed the penalty levied by the AO on various additions and dismissed the appeal filed by the assessee. Aggrieved by the Ld. CIT(A)'s order, the assessee is in appeal before us.

5. The Ld. A.R. for the assessee, at the time of hearing, referring to petition filed for admission of additional ground submitted that the assessee has filed a petition raising additional ground of appeal challenging validity of penalty order passed by the AO consequent to vague notice issued under section 274 read with section 271 of the Income Tax Act, 1961 and additional ground filed by the assessee goes to challenge the jurisdiction of the AO in levying the penalty and hence, the same may be admitted and decided on merits. The Ld. A.R. further submitted that if you go through copy of notice issued under section 274 read with section 271 of the Income Tax Act, 1961 it is very clear that the AO is not clear whether he is initiating penalty for concealment of income or for furnishing of inaccurate particulars of income. Therefore, further proceedings consequent to vague notice is void ab-initio and liable to be quashed. In this regard, he has relied upon plethora of judicial decisions including the Hon'ble Bombay High Court in the case of CIT vs. Samson Perinchery in ITA No.1154 of 2014 dated 05.01.2017.

6. Ld. Senior Counsel appeared for the Revenue on the other hand, strongly opposing the additional ground filed by the assessee submitted that the additional ground filed by the assessee should not be admitted, because the assessee has not been able to satisfy as to why said ground could not have been raised earlier. The Ld. D.R. further submitted that the penalty provisions under section 271(1)(c) requires 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 and such satisfaction must be arrived at in the course of any proceedings under the Act. The AO has

arrived at clear satisfaction in respect of various additions made during the course of assessment proceedings and therefore subsequent issue of notice is only procedural aspect and any defect in said notice is a procedural lapses which cannot be considered as fatal to quash penalty order passed by the AO.

7. We have heard both the parties and considered material available on record, including additional ground filed by the assessee. We find that additional ground filed by the assessee challenging the validity of penalty order passed by the AO goes to route of the matter in questioning jurisdiction of the AO in levying penalty under section 271(1)(c) of the Income Tax Act, 1961 and hence, we are of the considered view that the additional ground filed by the assessee deserves to be heard on merit and accordingly admitted additional grounds for hearing. In so far as additional ground filed by the assessee in light of notice issued under section 274 read with section 271 of the Income Tax Act, 1961, we find that the AO has arrived at clear satisfaction to the effect that the assessee has either concealed the particulars of income or furnished inaccurate particulars of income which is the condition precedent for levy of penalty and such satisfaction must be arrived at in the course of any proceedings. Since, the AO has arrived at satisfaction regarding various additions made by the AO and came to the conclusion that the assessee has concealed particulars of income/furnished inaccurate particulars of income, subsequent issue of notice is a procedural aspect and defect in such procedural aspect cannot be considered as fatal so as to hold that penalty proceedings are void ab-initio. Although, the assessee has cited number of judicial precedents, we find that in the case laws considered by

the assessee, a categorical finding was recorded by the Tribunals/courts in light of satisfaction arrived at by the AO during assessment proceedings and notice issued under section 274 read with section 271 and came to the conclusion that in absence of proper notice penalty levied under section 271(1)(c) cannot be sustained. In this case, the AO has arrived at clear satisfaction having regard to various additions made during assessment proceedings and hence we are of the considered view that non striking off in applicable portion in the notice is not fatal so as to hold that penalty proceedings initiated by the AO and consequent penalty order is void ab-initio and liable to be quashed. Accordingly, additional ground filed by the assessee is hereby rejected.

8. Coming to the issue on merit, the Ld. A.R. for the assessee, at the time of hearing, submitted that although the AO has levied penalty in respect of 5 additions including write off of bad debts, provision for bad debts, written off of bad loans, decrease in value of stock and prior period expenses, the Tribunal in quantum proceedings has allowed partial relief to the assessee in respect of bad debts written off and out of total additions made by the AO of Rs.38,30,66,554/- from 8 parties, the Tribunal has deleted bad debts claim in respect of 7 parties as listed by the AO in his assessment order at para 4.1, however, in respect of bad debts claim pertains to Trim Securities Ltd. the issue has been set aside to the file of the AO for further verification. Similarly, the Tribunal has set aside additions made by the AO towards provision for bad debts and bad loans written off, however, confirmed additions made towards decrease in value of stock and prior period expenses. The Ld. A.R. further

submitted that when the issue has been set aside to file of the AO, the question of levy of penalty on those additions cannot arise. In respect of additions confirmed by the ITAT, though on merit, the contentions of the assessee have been rejected by the Tribunal but yet the issue of decrease in value of stock and prior period expenses cannot come within the ambit of provisions of section 271(1)(c) of the Income Tax Act, 1961, because the assessee has furnished complete information in respect of those items.

9. The Ld. D.R., on the other hand, submitted that since the appeal filed by the assessee has been set aside to the file of the AO in respect of certain issues, the penalty levied by the AO may also needs to be set aside to the file of the AO to decide the issue afresh after the outcome of quantum proceedings pending before the AO.

10. We have heard both the parties, perused the material available on record and gone through the order of authorities below. It is an admitted fact that in quantum appeal proceedings the Tribunal has partially allowed appeal filed by the assessee where it has allowed partial relief in respect of bad debts claim and in respect of one party the issue has been set aside to the file of the AO for further verification. We find that in respect of deletion of additions towards bad debts, the question of levy of penalty does not arise because the additions made by the AO is no longer survived and hence penalty levied to that extent cannot survive in the eyes of law. Accordingly, we direct the AO to delete penalty in respect of additions deleted by the Tribunal. In respect of issues which have been set aside to the file of the

AO, the penalty proceedings cannot be finalised unless the quantum proceedings pending before the AO has been finalised. Similarly, in respect of additions confirmed by the AO, although issues has been decided on merits but part of the issues are still not attained finality from this side of the AO, therefore it is difficult to decide penalty under section 271(1)(c) of the Income Tax Act, 1961 on piece mail basis in respect of each addition. Hence, we are of the considered view that the appeal filed by the assessee challenging the order of the AO in levy of penalty under section 271(1)(c) of the Income Tax Act, 1961 needs to go back to the file of the AO to decide the penalty under section 271(1)(c) after completion of assessment proceedings in pursuant to directions of the ITAT in quantum proceedings. Hence, we set aside the appeal filed by the assessee to the file of the AO and direct him to take penalty proceedings after completion of assessment proceedings in light of observations of the Tribunal on various issues. Needless to say, the AO may take the benefit of provisions of section 275 of the Act, at the time of penalty proceedings.

11. In the result, appeal filed by the assessee is partly allowed for statistical purpose.

ITA No.2706/M/2012

12. The facts and issues involved in this appeal are identical to the facts and issues which we had considered in ITA No.2705/M/2012. The AO has levied penalty u/s 271(1)(c) in respect of various additions made in assessment proceedings including waiver of bank loan and interest thereon without waiting for outcome of appeal filed by the assessee before the Tribunal. We find that the Tribunal in second round of litigation

has allowed relief to the assessee in respect of various additions made by the AO on which penalty under section 271(1)(c) has been levied. Once additions on which penalty levied by the AO has been deleted by the Tribunal, then the question of penalty on those additions for concealment of particulars of income/for furnishing of inaccurate particulars of income does not arise. Accordingly, we direct the AO to delete the penalty levied under section 271(1)(c) of the Income Tax Act, 1961.

13. In the result, the appeal filed by the assessee is allowed.

14. As a result, appeal filed by the assessee for A.Y. 2004-05 is treated as partly allowed for statistical purposes and appeal filed for assessment year 2005-06 is allowed.

Order pronounced in the open court on 08 .11.2019.

**Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER**

**Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER**

Mumbai, Dated: 08 .11.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.