

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITANo.4805/Del/2016
Assessment Year: 2012-13**

**M/s. QL2 Software India Pvt. Ltd., Vs. ITO,
C/o- Chachan&Lath, 1308-09, Best Ward-3(2),
Sky Tower, F-5, Netaji Subhash Gurgaon
Place, Pitampura, Delhi**

**PAN: AAACQ1399R
(Appellant)**

(Respondent)

Appellant by : Shri Kapil Goel, Advocate
Respondent by: Shri Surender Pal, Sr. DR

Date of hearing: 03/12/2019
Date of order : 12/12/2019

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 24/6/2016 in appeal No. 260/2015-16 passed by the learned Commissioner of Income Tax (Appeals)-1, Gurgaon ("Ld. CIT(A)") for assessment year 2012-13, sustaining the penalty of Rs.22,54,550/-levied by the learned Assessing Officer, M/s QL2 Software India Private Limited ("the assessee") preferred this appeal.

2. Brief facts of the case are that the assessee is engaged in the business of information technology enabled services and 100 percent EOU unit. For the assessment year 2012-13, it had filed its return of income on 28/11/2012 declaring income of Rs.52,840/-and claimed deduction under section 10B of the Income Tax Act, 1961 (for short "the Act") to the tune of Rs.36,48,138/-. Assessment under section 143(3) of the Act was complete by order dated 13/3/2015 determining the total income of the assessee at Rs.37,00,980/-by making addition of Rs.36,48,138/-on account of disallowance of the claim of exemption under section 10B of the Act. Learned Assessing Officer simultaneously initiated penalty proceedings under section 271(1)(c) of the Act and concluded them by order dated 18/9/2015 with the levy of penalty of Rs.22,54,550/-.

3. Aggrieved by such levy of penalty, assessee preferred an appeal before the Ld. CIT(A). Ld. CIT(A) by way of impugned order rejected all the contentions of the assessee and upheld the levy of penalty. Assessee is, therefore, before us in this appeal challenging the penalty order on several grounds, which includes that neither the assessment order nor the penalty noticespecify the exact charge/limb of section 271(1)(c) of the Act under which the proceedings were initiated. Ld. AR submitted that the claim bona fide and full and complete factual disclosure was made by the assessee in the return of income itself. On this aspect, Ld. AR placed reliance on the decisions of the Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565, Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 taxman.com 241 (Kar)and also the decision of the Hon'ble

Jurisdictional High Court in the case of Ld. PCIT vs. Sahara India Life Insurance Co. Ltd. in ITA No. 475 and batch of 2019, and submitted that penalty cannot be sustained.

4. Per contra, by placing on the decision of the Hon'ble Madras High Court in the case of Sundaram Finance Ltd vs. CIT (2018) 403 ITR 407 (Madras), Ld. DR submitted that the assessee understood the purport of the notice and without raising any objection whatsoever they have participated in the penalty proceedings as well as the proceedings before the Ld. CIT(A) and, therefore, no prejudice was caused to the case of the assessee. He, therefore, prayed to dismiss the appeal.

5. We have gone through the record in the light of the submissions made on either side. While recording the satisfaction in the order dated 13(3) of the Act, 2015 passed under section 143(3) of the Act, learned Assessing Officer stated that she was satisfied that the inaccurate particulars of income were furnished thereby concealing an income on account of wrong claim of deduction. It could be seen from the notices dated 11/3/2015 issued under section 274 of the Act read with section 271(1)(c) of the Act that the assessee was called upon to defend the charge of having concealed the particulars of income or furnishing inaccurate particulars thereof. Penalty was levied vide order dated 18/9/2015 for submitting incorrect and inaccurate particulars of income.

6. It is pertinent to note that, order passed in section 143(3) of the Act does not specify whether the proceedings were to be initiated for either concealment of income or for furnishing inaccurate particulars or both. It reads that inaccurate particulars of income were furnished

thereby concealing an income on account of wrong claim. Notice under section 274 read with section 271(1)(c) of the Act, however, reads that the assessee had to defend itself for concealment of particulars of income or furnishing of inaccurate particulars thereof. It does not specify whether it was concealment of income or furnishing of inaccurate particulars thereof. Impugned penalty order, however, reads that penalty was levied for submitting inaccurate particulars of income. These facts indicate that there is discrepancy as to in respect of which charge the assessee was called upon to defend itself. In the light of this factual position, we shall proceed to read the decisions relied upon by the assessee.

7. 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.”

8. 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?”

9. And the Hon’be High Court ruled 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.”

10. 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."

11. In PCIT vs. Sahara India Life Insurance Company Limited, ITA No 475/2019 and batch order dated 02/08/2019, Hon'ble Delhi High Court, upheld the view taken by the Tribunal basing 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 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."

8. It is, therefore, clear 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.

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

Order Pronounced in open court on 12th December, 2019.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 12/12/2019
'RK'

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI