

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
ITA No.2325/Del./2017, A.Y. 2000-01

Singhal Strips Ltd. 440/1, Bholanath Nagar, Ward- Shadhara, Delhi -32 PAN : AAACS0344J (APPELLANT)	Vs.	DCIT, Circle 8(1) New Delhi (RESPONDENT)
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ASSESSEE BY : None
REVENUE BY : Shri S.S.Rana, CIT(DR)

Date of Hearing : 02.12.2019
Date of Order : 17.12.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant Singhal Strips Ltd., Delhi (hereinafter referred to as 'the assessee') by filing the aforesaid appeal, sought to set aside the impugned order dated 01/02/2017 passed by Ld. Commissioner of Income Tax(Appeals)-15, New Delhi qua the Assessment Year 2000-01 on the grounds inter alia that :

“1(i). That on facts and circumstances of the case, the Ld. CIT(A) was not justified in confirming penalty u/s 271(1)(c) even though there is no case of recording of proper satisfaction in terms of provisions of section 271(1)(c) of the Act and as such the penalty order is illegal and without jurisdiction.

ii) That in absence of recording of specific satisfaction or levying of specific charge as to concealment of income or furnishing of inaccurate particulars of income, the notice u/s 274 and the consequential order is invalid and void-ab-initio.

2(i) That on facts and circumstances of the case, the Ld. CIT(A) was not justified in confirming penalty of Rs. 6,19,080/- on the alleged ground of concealment and furnishing of inaccurate particulars of income even though the fact of share application money is apparent from the face of financial statements and as such there is no case of any penalty in terms of provisions of section 271(1)(c) of the Act.

(ii) That even on merits, the addition u/s 68 being on technical grounds, there is no case of any concealment or furnishing of inaccurate particulars of income u/s 271(1)(c) of the Act.

3(i) That merely on the basis of addition in the assessment order, there cannot be any presumption about concealment or furnishing of inaccurate particulars when all the relevant facts were part of record.

3(ii) application money u/s 68 has been made on the basis of presumption and there is no finding regarding concealment or furnishing of inaccurate particulars of income and as such penalty is not sustainable.

4. That this is a case of loss and presumption about concealment is illegal, arbitrary and misconceived.

5. That the assessee craves leave to add, amend, alter or forgo any or all of the grounds as may be necessary and in the interest of justice.

6. That penalty order is not justified on facts and same is bad in law.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are: On the basis of assessment framed u/s 147/143(3) of the Act making addition of Rs. 16,00,000/- and Rs. 8,000/- on account of unexplained cash credit and unexplained

expenditure respectively, AO proceeded to initiate the penalty proceedings against the assessee u/s 271(1)(c) of the Act. Rejecting the submissions made by assessee AO proceeded to levy the penalty of Rs. 6,19,080/- at the rate of 100% of the tax sought to be evaded i.e. 6,19,080/- for furnishing inaccurate particulars of income.

3. Assessee carried the matter before the Ld. CIT(A) who has confirmed the penalty by dismissing the appeal of the assessee. Feeling aggrieved the assessee has come up before the Tribunal by way of present appeal.

4. Assessee has failed to turn up to pursue the present appeal despite notice and consequently bench proceeded to decide the appeal with the assistance of Ld. DR for the revenue ex parte on merit.

5. Undisputedly addition made by the AO to the tune of Rs. 16,00,000/- and Rs. 8000/- on account of unexplained cash credit and unexplained expenditure respectively has been confirmed by CIT(A). It is also not in dispute that assessee company is a sick company and proceedings on its behalf are not being attended too. It is also not in dispute that after remand of the case by the Tribunal to AO none appeared on behalf of the assessee before the

Assessing Officer who has framed the assessment on account of non-furnishing of the details by the assessee.

6. In the backdrop of the aforesaid undisputed facts & circumstances of the case, order passed by the lower revenue authorities and arguments addressed by the Ld. Authorized 4 ITA No.1232/Del./2016 Representatives of the parties to the appeal, the sole question arises for determination in this case is:-

“As to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of such income during assessment proceedings?”

7. Ld. AR for the assessee challenging the impugned order contended inter alia that AO in order to initiate the penalty proceedings has prima facie failed to satisfy himself that as to whether the assessee has concealed the particulars of income or have furnished inaccurate particulars of income in the assessment order as well as in the show cause notice issued under section 271(1)(c) / 274 of the Act and relied upon the decision of Hon'ble Karnataka High Court in case of CIT vs. Manjunatha Cotton and Ginning Factory-359ITR 565 and CIT vs. SSA's Emerala Meadows -73 taxmann.com 241 (kar.) (Revenue's SLP dismissed in 242 taxman 180).

8. From the perusal of assessment order on the basis of which penalty proceedings u/s 271(1)(c) of the Act was initiated apparently goes to prove that Assessing Officer has failed to record valid satisfaction so as to initiate the penalty proceedings u/s 271(1)(c) of the Act as to under which limb of the Section 271(1)(c) i.e. as to whether assessee has concealed the particulars of income or has furnished inaccurate particulars of such income, the penalty proceedings has been initiated. Even perusal of the penalty order goes to show that the penalty has been levied merely on the basis of addition made by the AO and confirmed by the Ld. CIT(A) and independent case has not been made out by the AO to levy the penalty u/s 271(1)(c) of the act.

9. For ready perusal para 5 of the assessment order containing satisfaction of then AO to initiate the penalty proceedings u/s 271(1)(c) of the Act is extracted as under :-

“5. In view of the above, I am satisfied that it is a fit case for initiation of penalty proceedings u/s 271(1)(C) of the Act, therefore, penalty proceedings u/s 271(1)(c) are initiated separately.”

10. So, perusal of the aforesaid satisfaction recorded by the AO shows that at the time of initiating penalty AO himself was not aware enough if he has initiated the penalty proceedings on

account of furnishing of inaccurate particulars of income or for concealment of income by the assessee rather mechanically sought to initiate the penalty proceedings u/s 271(1)(c) of the Act. When initiation of the penalty itself is not valid, it does not provide any cause of action as required u/s 271(1)(c) of the Act to levy the penalty on the assessee.

11. Moreover when AO has not recorded valid satisfaction required u/s 271(1)(c) notice issued u/s 274 read with section 271(1)(c) to initiate the penalty proceeding is not specified one so as to make out if the assessee has concealed particulars of income or has furnished inaccurate particulars of such income. Hon'ble Apex Court in case of **CIT vs. M/S 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 u/s 274 of the Act 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]”

12. Ratio of **CIT vs. SSA’s Emerald Meadows – (2016) 73 taxmann.com 248 (SC)** is applicable to the facts and circumstances of the present case because when at the time of initiating the penalty proceedings AO was not clear enough as to whether penalty proceedings have been initiated for concealment of particulars of income or furnishing inaccurate particulars of income, penalty cannot be levied.

13. Moreover, penalty order has been passed by the AO merely on the basis of additions made by AO and confirmed by Ld. CIT(A) and has failed to independently prove as to how and under what circumstances, the assessee has furnished inaccurate particulars of income. Again for facility of reference operative part of the penalty order is extracted as under :-

“The addition made u/s 68 has been clearly confirmed by the CIT(A) as the identity, creditworthiness and genuineness of transaction relating to share application money had not been proven both during the assessment and appellate proceedings. In view of the above, it is clear that the assessee has furnished inaccurate particulars of his income with a view to evade taxes. The

penalty for inaccurate particulars u/s 271(1)(c), range from minimum of 100% of tax sought to have evaded and goes upto 300% which is worked out as under:

<i>Income in respect of which inaccurate Particulars were furnished</i>	<i>: Rs. 16,08,000/-</i>
<i>Tax sought to be evaded</i>	<i>: Rs. 6,19,080/-</i>
<i>Minimum Penalty (100% of the tax Sought to have evaded)</i>	<i>: Rs. 6,19,080/-</i>
<i>Maximum Penalty (300% of the tax Sought to have evaded)</i>	<i>: Rs. 6,19,080/-</i>

14. In view of what has been discussed above, we are of the considered view that AO has miserably failed to record valid satisfaction so as to initiate the penalty proceedings u/s 271(1)(c) and consequently further proceedings for levying the penalties are not sustainable in the eyes of law, hence penalty levied by the AO and confirmed by Ld. CIT(A) is order to be deleted.

15. Resultantly, appeal filed by the assessee is allowed.

Order pronounced in open court on this 17th December, 2019.

Sd/-
(R.K.PANDA)
ACCOUNTANT MEMBER

Dated : 17/12/ 2019

BR

Sd/-
(KULDIP SINGH)
JUDICIALMEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)-19, New Delhi.
5. CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI

Date of dictation	4/12/2019
Date on which the typed draft is placed before the dictating Member	06/12/2019
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	