

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

BEFORE SH. N. K. CHOUDHRY, JUDICIAL MEMBER
AND SH. O. P. MEENA ACCOUNTANT MEMBER

I.T.A. No. 146/Asr/2017
Assessment Year: 2011-12

Sh. Piyush Saraf
H. No-230 Talab Tillo,
Jammu

vs. I.T.O. Ward-2(2), Jammu

[PAN: CAJPS 3268R]

(Appellant)

(Respondent)

Appellant by : None

Respondent by: Smt. Raman Damathia DR

Date of Hearing: 17.12.2019

Date of Pronouncement: 19.12.2019

ORDER

Per O. P. Meena, AM:

This appeal by the Assessee is filed against the order of learned Commissioner of Income Tax (Appeals), Jammu u/s 250(6) of the I.T. Act, 1961 dated 22.06.2016 for the Assessment Year 2011-12.

2. The assessee has raised the following grounds of appeal:

- “1. That the order under appeal is against the law and facts of the case.
2. That on the facts and circumstances of the case no penalty is imposable upon the appellant.
3. That the Ld.C.I.T.(A), Jammu has not been justified in confirming the penalty imposed u/s 271(1)(c) of the Income Tax Act, 1961.

4. *Any other Ground which maybe urged and allowed at the time of hearing.”*
3. During the currency of appeal, the assessee has raised an additional ground which reads as under:

“That the CIT(A) has erred in law while confirming the penalty order of AO u/s 271(1)(c) of Income Tax Act, being illegal, invalid and void ab-initio, in as much as, the reasons for initiation of penalty proceedings are different in quantum order from the penalty order, so much so, the notice u/s 274 issued by the AO is illegal, invalid and void ab-initio.”

4. We have heard the parties. We find that additional ground is being purely legal and arises from impugned order and goes to the root of matter, hence, same is admitted in the light of decision of Hon'ble Supreme Court in the case of *National Thermal Power Co. Ltd. v. CIT* [1998] 229 ITR 383 (SC).

5. The assessee challenged the penalty order on various grounds and also claimed that the issue under considered is squarely covered by the decisions of tribunal, on the contrary, the Ld. CIT(DR) also relied upon the judgment of the Hon'ble Delhi High Court in support of revenue's case, however we realized that in the instant case, the AO initiated penalty proceedings on both of the limbs as specified in section 271(1)(c) of the Act i.e. 'concealment of income and furnished inaccurate particulars of income' and thereafter issued the notice u/s 274 without specifying the limb of the penalty imposable and finally imposed penalty for concealment of income, therefore we find it appropriate to decide the legal issue involved in the instant case, instead of going into merits and analyzing the facts and decision relied upon by the parties.

6. Hon'ble Apex Court in case of *M/s. SSA's Emerald Meadows, (2016) 73 taxmann.com 248(SC)* dismissed the Special Leave Petition filed by the Revenue against the judgment rendered by Hon'ble High Court of Karnataka whereby identical issue was decided in favour of the assessee. Operative part of the judgment in case of *M/s. SSA's Emerald Meadows* (supra) decided by Hon'ble High Court of Karnataka is reproduced below:-

"2. *This appeal has been filed raising the following substantial questions of law:*

(1) Whether, omission of 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?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.s. 271(1)(c) is bad in law and invalid in spite of the amendment of Section 271(1) B with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued, under Section 274 without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?

3. *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 upon the decision of the Division Bench of this Court rendered in the case of COMMISSIONER or INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565.*

4. *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."

7. The penalty provisions of section 271(1)(c) of the Act are attracted where the assessee has concealed the particulars of income or furnished inaccurate particulars of such income. It is also a well-accepted proposition that the aforesaid two limbs of section 271(1)(c) of the Act carry different meanings. Therefore, it was imperative for the Assessing Officer to strike - off the irrelevant limb so as to make the assessee aware as to what is the charge made against him so that he can respond accordingly. The Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar) observed that the levy of penalty has to be clear as to the limb under which it is being levied. As per Hon'ble High Court, where the Assessing Officer proposed to invoke first limb being concealment, then the notice has to be appropriately marked. The Hon'ble High Court held that the standard proforma of notice under section 274 of the Act without striking of the irrelevant clauses would lead to an inference of non-application of mind by the Assessing Officer. The Hon'ble Supreme Court in the case of Dilip N. Shroff vs. JCIT, 291 ITR 519(SC) has also noticed that where the Assessing Officer issues notice under section 274 of the Act in the standard proforma and the inappropriate words are not deleted, the same would postulate that the Assessing Officer was not sure as to whether he was to proceed on the basis that the assessee had concealed the particulars of his income or furnished inaccurate particulars of income. According to the Hon'ble Supreme Court, in such a situation, levy of penalty suffers from non-application of mind. In the background of the aforesaid legal position and, having regard to the manner in which the Assessing Officer has issued notice under section 274 r.w.s. 271(1)(c) of the Act dated 30-08-2013 without striking off the irrelevant words, apparently goes

to prove that the Assessing Officer initiated the penalty proceedings by issuing the notice u/s 274/271(1)(c) of the Act without specifying whether the assessee has concealed "*particulars of income*" or assessee has furnished "*inaccurate particulars of income*", so as to provide adequate opportunity to the assessee to explain the show cause notice. Rather notice in this case has been issued in a stereotyped manner without applying mind which is bad in law, hence cannot be considered a valid notice sufficient to impose penalty u/s 271(1)(c) of the Act. Even the mind of the AO, while initiating the penalty proceedings, issuing notice u/s 274 of the Act and imposing the penalty itself, was not clear under which limb, the assessee had to reply and to defend its case, therefore we are of the view that under these circumstances, the penalty is not leviable as held by the various Court including Apex Court and hence, we have no hesitation to delete the penalty levied by the AO.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on December 19, 2019

Sd/-
(N. K. Choudhry)
Judicial Member

Sd/-
(O. P. Meena)
Accountant Member

Date: 19.12.2019

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals),
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy

By Order