

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

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA Nos.5909 & 5910/M/2016  
Assessment Years: 2007-08 & 2008-09**

M/s. Thomas Cook (India) Ltd., Thomas Cook Building, Dr. D.N. Road, Fort, Mumbai – 400 001 <b>PAN: AACT4050C</b>	Vs.	Addl. CIT 1(3), Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Madhur Aggarwal, A.R.  
Revenue by : Shri Awunghi Gimson, D.R.

Date of Hearing : 25.09.2019  
Date of Pronouncement : 17.12.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 27.07.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2008-09.

**ITA No.5909/M/2016**

2. The grounds raised by the assessee in ITA No.5909/M/2016 A.Y. 2007-08 are as under:

“1.1 On the facts and circumstances of the case , the Commissioner of Income Tax (Appeals) -3, Mumbai, (hereinafter referred to as the "CIT(A)-3") erred in levying penalty under section 271(1)(c)of the Act, aggregating to Rs. 5,01,93,601/-.

1.2 The appellant prays that the Respondent be directed to delete the penalty levied of Rs.5,01,93,601/-“

The assessee has also raised additional grounds which are reproduced below:

**“1 : 0 Re.: Levy of penalty u/s. 271(1)(c):**

1 : 1 The Commissioner of Income-tax (Appeals) has erred in upholding the penalty levied by the Assessing Officer u/s. 271(l)(c) of the Income-tax Act, 1961 on the Appellant.

1 : 2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, it has neither concealed any income nor furnished inaccurate particulars of income. Hence no penalty whatsoever can be levied on it u/s.271(l)(c) of the Income-tax Act, 1961 and the Commissioner of Income-tax (Appeals) ought to have held as such.

1 : 3 The Appellant submits that the impugned Order levying penalty u/s.271(l)(c) of the Income-tax Act, 1961 be struck down.

**2:0 Re : General:**

2 : 1 The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.”

3. The only issue raised by the assessee is with respect to erroneous confirmation of levy of penalty by Ld. CIT(A) as imposed by the AO under section 271(1)(c) of the Act of Rs.5,01,93,601/-.

4. The facts in brief are that the assessee filed the return of income on 30.10.2007 declaring an income of Rs.24,53,92,971/- which was revised to Rs.24,20,16,971/- on 26.03.2009. The assessment under section 143(3) of the Act was completed on 10.02.2011 assessing the income of Rs.39,50,69,028/- by making three disallowances namely depreciation of vacant property of Rs.2,07,435/-, disallowance of non compete fee of Rs.14,70,00,000/- and disallowance of web development charges of Rs.19,12,000/-. The penalty proceedings were initiated in the assessment order by issuing notice dated 10.02.2011 under section 271 read with section 274 of the Act. Finally, the penalty was levied of Rs.5,01,93,601/- equal to 100% of the tax sought to be evaded. According to the AO, the

assessee has concealed a particular of income amounting to Rs.14,91,19,435/-. In the assessment order the AO has not recorded his satisfaction whether the penalty is being initiated for concealment of particulars of income or for filing inaccurate particulars of income. Similarly, in the notice issued dated 10.02.2011 the AO has not specified one of the two limbs on which the penalty was proposed to be levied.

5. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee after taking into consideration the submissions of the assessee on legal issue as well as on merit and hence the assessee is in appeal before us. The Ld. A.R. vehemently submitted before us that the penalty has been initiated by the AO without application of mind as is clear from the assessment order dated 10.02.2011 passed under section 143(3) of the Act where the AO has simply mentioned that penalty initiated under section 271(1)(c) of the Act without mentioning whether i.e. for the concealment of particulars of income or for filing inaccurate particulars of income. Similarly, the notice dated 10.02.2011 has been issued in a mechanical manner without application of mind as is clear from the fact that one of the two limbs on which the penalty was proposed to be levied was not indicated in the notice. In other words, the Ld. A.R. submitted that the notice has been issued in a standard format thereby depriving the assessee of its right to respond on the charge on which the penalty was being proposed to be levied. The Ld. A.R. therefore prayed that the said defects is incurable and goes to the root of the matter and therefore the penalty order can not be sustained. The Ld. A.R. relied on the following decision in support of his arguments.

- a) CIT Vs SSA's Emerald Meadows(SC) (2016) 73 Taxmann.com 241 Karnataka – SLP dismissed as reported in (2016) 73 Taxmann.com 248 (SC)
- b) CIT vs. Manjunath Cotton and Ginning Factory (2013) 359 ITR 565 (Kar.)
- c) CIT vs. Shri Samson Perinchery (2017) 392 ITR 4 (Bom.)
- d) CIT vs. Mrs. Piedade Perinchery ITXA No.1310 of 2014 order dated 10.01.2017 (Bom. – HC)

6. The ld. DR on the other hand relied on the orders of authorities below.

7. After hearing both the parties and perusing the material on record, we observe that in this case the AO while passing the order has not indicated or recorded his satisfaction in the assessment order whether the assessee has concealed the particulars of income or filed inaccurate particulars of income. The AO simply stated the initiation of penalty under section 271(1)(c) of the Act in the assessment framed. Besides perusal of notice issued under section 271 read with section 274 of the Act dated 10.02.2011 reveals that there was no application of mind on the part of AO while issuing the penalty notice as the same has been issued in a standard format by specifying both the charges thereby depriving the assessee to respond to the charge on which the penalty was proposed to be levied. In our opinion, the assessee is deprived to respond to the charge on which the penalty was proposed to be levied thereby causing violation of principle of natural justice. Under these circumstances, we are not in a position to sustain the order passed by the lower authorities. The case of the assessee is supported by the decisions of the jurisdictional High Court in the case of CIT vs. Shri Samson Perinchery and CIT vs. Mrs.

Piedade Perinchery (Supra) wherein the Hon'ble court has held that where the notice u/s 271 r.w.s.274 of the Act is issued in standardized format without specifying the charge on which the penalty is to be levied, the penalty imposed can not be sustained.v After considering the facts of the case in the light of the decisions as discussed hereinabove, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the penalty. Accordingly, the appeal of the assessee is allowed.

**ITA No.5910/M/2016**

8. The issue involved in the present appeal is identical to the one as stated above in ITA No.5909/M/2016 A.Y. 2007-08. Therefore, our finding in ITA No.5909/M/2016 A.Y. 2007-08, would, mutatis mutandis, apply to this appeal as well. Accordingly the appeal of the assessee is allowed.

9. In the result, both the appeals of the assessee are allowed.

**Order pronounced in the open court on 17.12.2019.**

**Sd/-  
(A.D. Jain)  
VICE PRESIDENT**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 17.12.2019.

\* 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