



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

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER AND
LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.349/CTK/2019

Assessment Year : 2014-2015

Bhubaneswar Club, A.G.Square, Unit-VI, Rajpath, Bhubaneswar.	Vs.	DCIT, Circle 1(1), Bhubaneswar.
PAN/GIR No.AABCB 3582 C		
(Appellant)	..	(Respondent)

Assessee by : Shri G.Naik/Rajat Kar & S.K.Sarangi, ARs
Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 27 /01/ 2020

Date of Pronouncement : 27 /01/2020

ORDER

Per C.M.Garg,JM

This is an appeal filed by the assessee against the order dated 23.9.2019 of the CIT(A),1, Bhubaneswar for the assessment year 2014-15.

2. The grievance of the assessee is that the Id CIT(A) is not justified in confirming the penalty of Rs.48,64,000/- under section 271(1)(c) of the Act.

3. At the outset, Ld. Counsel for the assessee submitted that in this case, notice u/s 274 r.w.s. 271 was issued on 14.12.2016 and the inappropriate words in the said notice have not been struck off. Therefore, it is not understood as to under which limb of provisions of Section

271(1)(c) of the Act, the Assessing Officer has levied penalty. Since the said show cause notice issued u/s 274 did not specify the charge against the assessee as to whether it was for concealing the particulars of income or for furnishing inaccurate particulars of income, therefore, the penalty order passed under Section 271(1)(c) of the Act in pursuance to the said notice deserves to be set aside. The Ld. AR relied upon the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory reported in 359 ITR 565 and also the decision of the Hon'ble Apex Court in case of CIT Vs. SSA's Emerald Meadows (2016) 73 Taxman.com 248 (SC). The Ld. AR accordingly submitted that the order of the CIT(A) be set aside and the penalty levied u/s 271(1)(c) be deleted. Ld A.R. also produced a decision of this Bench of the Tribunal in the case of Shri Ranjan Kumar Sahu vs ITO in ITA No.252/CTK/2018 for A.Y. 2011-12 dated 13.9.2019 and submitted that the issue is covered in favour of the assessee by the said decision.

4. On the other hand, the Ld. DR strongly supported the orders of the authorities below.

5. We have heard the rival submissions and perused the material available on record, inter alia, notices u/s.274 read with section 271(1)(c) of the Act dated 14.12.2016. We find the only issue to be decided in the grounds of appeal is regarding the sustainable of penalty levied u/s 271(1)(c) when the inappropriate words in the notice issued u/s 274 r.w.s.

271 of the Act have not been struck off. A perusal of the notices issued u/s 274 r.w.s. 271 dated 14.12.2016 show that the inappropriate words in the said notice have not been struck off. Even the last line of the said notice only speaks of Section 271 and does not even mention of section 271(1)(c) of the I.T. Act. It is pertinent to note here that the penalty order is based on furnishing of inaccurate particulars but the notice is not specifying exactly on which limb the penalty u/s 271(1)(c) has been initiated. From the notice dated 14.12.2016 produced during the hearing, it can be seen that the Assessing Officer was not sure under which limb of provisions of Section 271 of the Income Tax Act, 1961, the assessee is liable for penalty. The issue is squarely covered by the decision of the Hon'ble Supreme Court in case of M/s SSA' Emerald Meadows (supra). Since in the instant case also the inappropriate words in the penalty notice has not been struck off and the notice does not specify as to under which limb of the provisions, the penalty u/s 271(1)(c) has been initiated, therefore, we are of the considered opinion that the penalty levied u/s 271(1)(c) is not sustainable and has to be deleted. We also in similar situation, this Bench of the Tribunal in the case of Shri Ranjan Kumar Sahu (supra) has deleted the penalty levied under section 271(1)(c) of the Act. Following the precedent, we set-aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied u/s.271(1)(c) of the Act of Rs.48,64,000/- and allow the appeal of the assessee.

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

Order pronounced on 27 /01/2020.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 27 /01/2020
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Bhubaneswar Club, A.G.Square,
Unit-VI, Rajpath, Bhubaneswar
2. The Respondent. DCIT, Circle 1(1),
Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1 , Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack