

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.6469/Del./2016, A.Y. 2011-12

Late Shri Jaswant Singh Madhok	Vs.	ACIT
Through L/H Sh. Sandeep Singh		Central Circle-3,
Madhok		New Delhi
D-97, Defence Colony,		
New Delhi - 110024		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : None
REVENUE BY : Shri Saras Kumar, Sr. DR

Date of Hearing : 20.01.2020
Date of Order : 31 .01.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant Late Shri Jaswant Singh Madhok through L/H Shri Sandeep Singh Madhok, New Delhi (hereinafter referred to as 'the assessee') by filing the aforesaid appeal, sought to set aside the impugned order dated 29/09/2016 passed by Ld. Commissioner of Income Tax(Appeals)-25, New Delhi qua the Assessment Year 2011-12 on the grounds inter alia that :

1. ***“That the Id. CIT(A) has erred in sustaining the penalty of Rs.4,21,344/- imposed u/s 271(l)(c)***

of the Act without appreciating the facts of the case and detailed submissions made by the appellant.

2. That the Id. CIT(A) has erred in not appreciating the facts of the case by holding that there is no double taxation.

3. That the Id. CIT(A) has erred in not adjudicating Ground Nos. 2 & 3 raised before him.

4. That the order imposing penalty is bad in law and void ab initio since in the show cause notice issued u/s 274 read with section 271 the Id. AO has not struck off the irrelevant clause of the notice, meaning thereby the AO has not apprise the assessee about the specific charge, under which assessee has been held guilty of penal action.

5. The appellant craves leave to add, alter, amend, delete, substitute any ground of appeal on or before the date of hearing.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : on the basis of assessment order framed u/s 153A/143(3) of the Income Tax Act, 1961 (for short “the Act”) at an income of Rs. 2,84,85,396/- by way of making addition of Rs. 14,43,784/- and 1,50,00,000/- on account of disallowance of credit card expenses and deemed dividend respectively, initiated the penalty proceedings u/s 271(1)(c) of the Act. Declining the contention raised by the assessee AO levied the penalty to the tune of Rs. 4,21,344/- @ 100% of the tax sought to be evaded.

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

Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly addition has been made in this case on account of disallowance of credit card expenses claimed by the assessee as well as on account of failure of the assessee to explain the source of acquisition of the jewellery. It is also not in dispute that identically worded notices u/s 274 read with section 271(1)(C) have been issued to initiate the penalty proceedings to the assessee in both the aforesaid appeals on the same date i.e. 30.03.2014.

7. From the perusal of the assessment order it is evident that at the time of initiating the penalty proceedings, the Assessing Officer was not aware enough as to under which limb of the Section 271(1)(c) of the Act i.e. “as to whether the assessee has concealed the particulars of income or has furnished inaccurate particulars of income”, he is proceeding. Likewise the Assessing Officer has issued a cryptic show cause notice u/s 271(1)(c) / 274 of the Act whereby he has failed to specify as to whether assessee has concealed the particulars of income or has furnished inaccurate

particulars of income.

8. Hon'ble Karnataka High Court in case of **CIT vs. Manjunatha Cotton and Ginning Factory-359ITR 565**, **CIT vs. SSA's Emerald Meadows -73 taxmann.com 241 (Kar.) (Revenue's SLP dismissed in 242 taxman 180)** and Hon'ble High Court of Delhi in **Pr. CIT vs. Sahara India Life Insurance Company Ltd. in ITA 475/2019 order dated 02.08.2019** decided the identical issue by confirming the deletion of penalty made by the lower appellate authority on account of invalid satisfaction and invalid notice.

9. In order to proceed further, we would like to peruse the identical notice issued by AO u/s 274 read with section 271(1)(c) of the Act in both the aforesaid appeals to initiate the penalty proceedings which is extracted as under for ready perusal :-

“NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961.

**Income Tax Office,
New Delhi.
Dated: 30.03.2014**

To,

**Late Sh. Jaswant Singh Madhok
Through L/H Sh. Sandeep Singh Madhok
A-101, Lajpat Nagar, Part-I,
New Delhi**

Whereas in the course of proceedings before me for the Assessment Year 2011-12 it appears to me that you :-

*** have without reasonable cause failed to furnish me return of**

income which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income-tax Act, 1961, No..... dt..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.

* have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under section 142(1)/143(2) of the Income - tax Act, 1961.

* have concealed the particulars of your Income or
Furnished inaccurate particulars of such Income.

You are hereby requested to appear before me on 28.04.2014 at 11 AM in my office at Room No. 332, E-2, ARA Centre, Jhandewalan Extension, New Delhi- 110055 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income - tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.

Yours faithfully,
Sd/-

(Indu Bala Saini)
Assistant Commissioner of Income Tax,
Central Circle-13, New Delhi

10. Bare perusal of the notices issued u/s 274 read with section 271(1)(c) of the Act, extracted above, in order to initiate the penalty proceedings against the assessee go to prove that the AO himself was not aware / sure as to whether she/he is issuing notice to initiate the penalty proceedings either for “concealment of particulars of income” or “furnishing of inaccurate particulars of

such income” by the assessee rather issued vague and ambiguous notice by incorporating both the limbs of section 271(1)(c). When the charge is to be framed against any person so as to move the penal provisions against him/her, he/she is required to be specifically made aware of the charges to be leveled against him/her.

11. Hon’ble High Court of Karnataka in case of **CIT vs. Manjunatha Cotton and Ginning Factory (supra)** while deciding the identical issue held that when the AO has failed to issue a specific show-cause notice to the assessee as required u/s 274 read with section 271(1)(c), penalty levied is not sustainable.

The operative part of the judgment is reproduced as under:-

“59. As the provision stands, the penalty proceedings can be initiated on various ground set out therein. If the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation 1 or in Explanation 1 (B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty on him as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in Section 271 (1)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy

requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As said provisions have to be held to be strictly construed, notice issued under Section 274 should satisfy the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended if the show cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.

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.

61. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are different. Thus the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars.

The Apex Court in the case of T Ashok Poi v. CIT [2007] 292 ITR 11 /161 Taxman 340 at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of CIT v. Manu Engg. [1980] 122 ITR 306 and the Delhi High Court in the case of CIT v. Virgo Marketing (P) Ltd. [2008] 171 Taxman 156, has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind. ”

11. Hon’ble Apex Court in case of **CIT vs. 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 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. Hon’ble Delhi High Court in case of Pr. **CIT vs. Sahara India Life Insurance Company Ltd. (supra)** while deciding the identical issue held as under :-

“21. The Respondent had challenged 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 the 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 judgment 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 of2016 by order dated 5th August, 2016.”

13. Following the decisions rendered in the cases of **CIT vs. Manjunatha Cotton and Ginning Factory, CIT vs. SSA's Emerald Meadows and Pr. CIT vs. Sahara India Life Insurance Company Ltd. (supra)**, we are of the considered view that when the notices issued by the AO are bad in law being vague and ambiguous having not specified under which limb of section 271(1)(c) of the Act, AO has moved the law into motion, the penalty proceedings initiated u/s 271(1)(c) are not sustainable.

14. Not only this even at the time of initiating the penalty proceedings the Assessing Officer has not applied his mind and as such was not aware enough as to whether he is initiating the penalty proceedings for concealment of particulars of income or for furnishing inaccurate particulars of income rather sought to initiate

the penalty against the assessee in a mechanical manner as under :-

“Penalty proceedings, u/s 271(1)(c) of the Income Tax Act, 1961 are initiated separately.”

15. We are of the considered view that when at the time of initiating penalty proceedings Assessing Officer was not aware as to under which of the limb of Section 271(1)(c) he is initiating the penalty proceedings subsequent proceedings u/s 271(1)(c) are futile exercise making levy of penalty and as such is not sustainable in the eye of law.

16. In view of what has been discussed above, AO failed to make out the case of concealment of income or furnishing inaccurate particular of income as the case may be by the assessee so as to attract the provisions contained u/s 271(1)(c) of the Act, hence, the penalty levied by the AO and confirmed by the Ld. CIT(A) is hereby ordered to be deleted.

17. Consequently, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 31st January, 2020.

**Sd/-
(B.R.R.KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated : 31/01/2020

BR

Copy forwarded to :

1. Appellant

2. Respondent
3. CIT
4. CIT(A)-25, New Delhi
5. CIT(ITAT), New Delhi

AR, ITAT
NEW DELHI

Date of dictation	20.01.2020
Date on which the typed draft is placed before the dictating Member	
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	