

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AGRA BENCH: AGRA**

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER, AND  
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A No.289/Agra/2018  
(ASSESSMENT YEAR: 2011-12)**

Shri Rakesh Kumar Gupta, Gupta Rice & Flour Mill Station Road, Mainpuri. PAN: ABEPG9644H <b>(Appellant)</b>	<b>Vs.</b>	ITO,2(5), Mainpuri.  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Shri R.C. Tomar, ITP.</b>
<b>Respondent by</b>	<b>Shri Waseem Arshad, Sr. DR.</b>

<b>Date of Hearing</b>	<b>09.01.2020</b>
<b>Date of Pronouncement</b>	<b>17.02.2020</b>

**ORDER**

**Per Dr. M.L. Meena, A.M.:**

This appeal is filed by the assessee against the order passed by the Id. CIT(A) challenging the common issue regarding validity of penalty order on account of defective show cause notice without any specific charge for levy of penalty u/s 271(1)(c) issued by the AO in view of the decision of Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory [2013] 35 taxmann.com 250.

2. The assessee has taken the following grounds:

“1. *That the penalty imposed and sustained by the C.I.T. (A) at Rs. 354013/- is illegal and arbitrary.*

2. *That the penalty imposed and sustained at Rs. 354013/- by the C.I.T. (A) on the basis of illegal notice issued u/s 271(l)(c) which did not specify the particular limb of sec. 271(l)(c) of the Act i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income is illegal.*

3. *That sending of notice where all the grounds mentioned in sec. 271 are mentioned would not satisfy the requirement of law and the penalty imposed on the basis of such a notice is illegal.*

4. *That in view of ratio laid down by Karnataka High Court decision in the case of Manjunath Cotton and Ginning Factory (2013) 359 ITR 565 and I.T.A.T. Agra Bench decision in the case of Kaila Devi Ice & Cold Storage and others is illegal.*

5. *That investment of Rs. 2340674/- as margin money which has been accepted partly and disallowed partly rejecting the independent evidence produced merely only change of opinion is illegal and arbitrary.*

6. *That mere non-acceptance of explanation given by assessee which has been partly accepted does not tantamount that the assessee has not been able substantiate his explanation and penalty imposed at Rs. 354013/- is illegal and arbitrary.*

7. *The appellant craves to add or alter any other ground of appeal as may be warranted.”*

3. At the outset, the counsel for the assessee, drawn our attention to the copy of the notice dated 18/02/2014 issued u/s 274 read with section 271(1)(c) of the act (APB, Pg. 1) and contended that the penalty so imposed and sustained at Rs. 354013/- by the C.I.T. (A) on the basis of such defective notice issued u/s 271(1)(c) which did not specify the particular limb of sec. 271(1)(c) of the Act

i.e. whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income, is illegal and that in view of ratio laid down by hon'ble Karnataka High Court in the case of Manjunath Cotton and Ginning Factory (2013) 359 ITR 565 and followed by I.T.A.T. Agra Bench in the cases of Shri Sachin Arora & Others in ITA 118/Agra/2015 & Bunch is bad in Law.

4. The issue of defective/illegal notice, in peri materia of facts, considering the decision of hon'ble Karnataka High Court in the case of Manjunath Cotton and Ginning Factory (Supra) has been examined by us at length, distinguishing the case laws relied upon by the Ld. DR in the bunch of appeal in cases of Rajesh Kumar Jain S/o Shri Surendra Jain and Others in ITA No. **I.T.A No. 259/Agra/2019 and 67 -68/Agra/2019**, very recently. The relevant part of the decision is extracted here under:

*20. We have heard the rival contention of the parties and perused the material available on record and have also considered the rival judgement cited by the respective parties before us. The revenue relied upon the decision of the Madras High Court in the matter of Sundaram finance(supra) whereas the assessee relies upon the decision of the Karnataka High Court in the matter of Manjunath Cotton Mill (supra); S.S. Emerald (supra) and that of Sachin Arora of the coordinate bench in ITA number 118/agra/2015. The Karnataka High Court in the matter of Manjunath Cotton Mill had laid down in various principles which are required to be complied by the revenue before finalizing the levy of penalty u/s 271(1)(c) on the*

*assessee. All those principles along with the decisions relied upon by the revenue were considered by the coordinate bench in the matter of Sachin Arora (supra) and thereafter had decided the matter in favour of the assessee. Though the argument prejudice to the assessee and also the argument of application of section 292B were raised by the revenue as noted herein above however in our respectful understanding the said arguments were considered by the coordinate bench in the matter of Sachin Arora thereafter had decided the appeals in favour of the assessee. Although we are impressed by the reasoning given by the revenue at the first instance however when we have considered the decision rendered by the coordinate bench in the matter of Sachin Arora (supra), we fail to follow the reasoning given by the revenue as we are bound by the authoritative pronouncement made by the coordinate bench in the same set of facts. Moreover we are also of the opinion that the jurisdictional High Court in the matter of the 'Dinesh Chandra Jain', (supra) had laid down an additional test to be considered while determining the case of penalty whereby it was held by the honourable court that the assessing officer should apply his mind denovo without being influenced by the finding recorded by the assessing officer in the assessment order. In fact, if we look into the order of penalty passed by the assessing officer, we found that there was no application of mind by the assessing officer and the assessing officer has merely borrowed and relied upon the finding recorded by the assessing officer in the assessment order.*

21. At this stage, it would be pertinent for us to record that a SLP is pending for adjudication before the Hon 'ble Supreme

*Court in the matter of 'CIT vs. State Bank of Mysore' in ITA No.129/2016 challenging the validity of the decision rendered by the Karnataka High Court. As the issue of crossing the relevant clause(concealment of penalty or inaccurate of particulars of income) is to be finally decided by the Hon'ble Supreme Court, therefore we deem it appropriate to permit the revenue to move appropriate application for restoration of these appeals if the issue is decided by the Hon'ble Supreme Court in favour the revenue. With these observations, all these appeals of the assesseees are allowed.*

5. In the above view, following our own decision on the issue, we accept the grievance of the assessee genuine and thus, it is justified to allow the grounds of appeal. However,as the issue of crossing the relevant clause(concealment of penalty or inaccurate of particulars of income) is to be finally decided by the Hon'ble Supreme Court, therefore we deem it appropriate to permit the revenue to move appropriate application for restoration of this appeal, if the issue is decided by the Hon'ble Supreme Court in favour the revenue.

6. In the result, appeal of the assessee is allowed with the observation as above.

**Order pronounced in the open court on 17<sup>th</sup> /02/2020.**

**Sd/-**

**(LalietKumar)**  
**JUDICIAL MEMBER**

**Sd/-**

**(Dr. M.L. Meena)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sr. Private Secretary,  
ITAT, Agra