

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.2475/Mum/2018  
(Assessment Year: 2013-14)

Navodaya Logistics Pvt.Ltd. Flat No.22, Vishwatar Condominium, Plot No.310,Khar (West) Mumbai-400 052	Vs.	DCIT-13(1)(1) Room No.218, 2 <sup>nd</sup> Floor Aaykar Bhawan M.K.Road Mumbai-400 020
<b>PAN/GIR No.AACCC8903H</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri Dharam V.Gandhi, AR
Revenue by	Shri Kailash Mangal, DR
<b>Date of Hearing</b>	<b>18/12/2019</b>
<b>Date of Pronouncement</b>	<b>04 /03/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-21, Mumbai, dated 29/12/2017 and it pertains to Assessment Year 2013-14.

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

- 1. The case of the assessee was selected for scrutiny by the then ITO 8(1 )(2) and subsequently transferred to the DCIT 13(1)(1).*
- 2. The Learned DCIT invoked the provision of Section 36(2) of the act and disallowed the claim of bad debts of Rs 1,50,00,000 on the ground that the same was in non-conformity "with the conditions prescribed by law for admission of the claim.*

3. Further for the said disallowance he also initiated penalty proceedings a penalty notice dated 01/03/2016 was sent and served on the assessee u/s 271(1)(c), of the Act and the Learned DCIT proceeded to levy a penalty of 100 percent of the above imposed tax liability i.e. Rs 752013.

4. The contention of the Learned DCIT is that there has been a reduction in the taxable income by a sum of Rs. 1,50,00,000/-. Had the case not been selected for scrutiny the assessee would have escaped the tax liability on the same and hence penalty u/s 271(1)(c) is leviable.

3. The assessee has also filed a petition for admission of additional grounds, vide letter dated 17/11/2019. The relevant grounds taken by the assessee is reproduced as under:-

*“Without prejudice to the other grounds, the notice issued u/s 274 of the Income tax Act, 1961 is bad in law and deserves to be quashed. Consequently, the penalty levied in pursuance to such notice is liable to be deleted.*

4. The brief facts of the case are that in this case, return of income was filed on 25/09/2013, declaring total loss of Rs.1,25,66,303/-. The assessment was completed u/s 143(3) of the I.T.Act, 1961 on 01/03/2016 assessing the total income at Rs.24,33,700/-, by making additions towards disallowances of bad debt claim of Rs. 1,50,00,000/-. Subsequently, the Ld. AO has initiated penalty proceedings u/s 271(1)(c) of the I.T.Act, 1961 and after considering relevant submissions of the assessee has levied penalty of Rs.7,52,013/-, which is equal to 100% tax sought to be evaded for furnishing inaccurate particulars of income and thereby concealed its income for the year under consideration, in respect of additions made towards disallowances of bad debt claim. The assessee carried the matter in appeal before the Ld.CIT(A). The Ld.CIT(A) for the detailed reasons recorded in his appellate order, dated 29/12/2017 uphold the penalty levied by the Ld. AO u/s 271(1)(c) of the I.T.Act, 1961 and dismissed appeal filed by the

assessee. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

5. The Ld. AR for the assessee, referring to additional grounds of appeal filed submitted that the issue involved in this appeals is squarely covered in favour of the assessee by the decision of Hon'ble Bombay High Court, in the case of CIT vs. Samson Perinchery 392 ITR 4, where it was held that in absence of proper satisfaction, as regards limb under which penalty proceedings are initiated or if penalty proceedings are initiated under one limb and penalty is levied under different limb, then whole penalty proceedings become vitiated and consequently, penalty levied by the Ld. AO cannot survive. In this regard, he also relied upon by the decision of Hon'ble Karnataka High Court in the case of CIT vs Manjunatha Cotton & Ginning Factory 359 ITR 565.

6. The Ld. DR, on the other hand, strongly supporting order of the Ld.CIT(A) submitted that the Ld. AO has arrived at clear satisfaction before initiation of penalty proceedings, which is evident from fact that during assessment proceedings, the Ld. AO has initiated penalty proceedings for furnishing inaccurate particulars of income. Therefore, there is no merit in legal grounds taken by the assessee.

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. It is a settled position of law that in absence of proper satisfaction arrived at before issue of notice, whether penalty proceedings is initiated for concealment of particulars of income or for furnishing inaccurate particulars of income, or if penalty proceedings is initiated for one

limb and levied under different limbs, then the whole penalty proceedings becomes vitiated and consequently, penalty levied u/s 271(1)(c) of the I.T.Act, 1961 cannot be survived. This legal principle is supported by the decision of Hon'ble Karnataka High Court, in the case of CIT vs Manjunatha Cotton & Ginning Factory(supra),where it was clearly that initiation of penalty proceedings under one limb and levying penalty under different limb is bad in law. This legal proposition is further supported by the decision of Hon'ble Supreme Court, in the case of CIT vs SSA's Emerald Meadows (2016) 242 taxman 180, where it was held that notice issued u/s 274 r.w.s 271(1)(c) of the Act,was bad in law, as he did not specify under which limb of section 271(1)(c) of the I.T.Act,1961 penalty proceedings had been initiated. The Hon'ble, Bombay High Court, in the case of CIT vs Samson Perinchery (supra) has taken a similar view and held that order imposing penalty has to be made only on ground of which penalty proceedings has been initiated and it cannot be on a fresh ground of which assessee has no notice. In this case, on perusal of show cause notice issued by the Ld. AO u/s 274 r.w.s. 271(1)(c) of the I.T.Act, 1961, it is abundantly clear that the Ld. AO has issued statutory notice without striking of inapplicable part of the notice, which clearly indicate that the Ld. AO has not applied his mind and arrived at satisfaction under which limb, the penalty proceedings has been initiated. Therefore, we are of the considered view that penalty levied by the Ld. AO u/s 271(1)(c) of the I.T.Act, 1961, consequent to, incorrect/invalid notice becomes *void-ab-initio* and is liable to be quashed. Hence, we quashed penalty order passed by the Ld. AO u/s 271(1)(c) of the I.T.Act, 1961.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 04 /03/2020

**Sd/-**  
**(MAHAVIR SINGH)**  
VICE PRESIDENT

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 04/03/2020  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai