

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: "B" NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 675/Del/2015  
Assessment Years: 2007-08**

<b>Deloitte Haskins &amp; Sells, 7<sup>th</sup> Floor, Building 10, Tower-B, DLF Cyber City Complex, DLF City, Phase-II, Gurgaon. PAN- AABFD 2095B (Appellant)</b>	<b>vs.</b>	<b>DCIT, Circle 37(1), New Delhi  (Respondent)</b>
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**Assessee by: Shri Percy Pardiuala, Sr. Adv.  
Shri Neeraj Seth, Advocate  
Department by: Shri Jagdish Singh, Sr. DR**

**Date of Hearing: 04/03/2020  
Date of Pronouncement: 04/03/2020**

**ORDER**

**PER K. NARASIMHA CHARY, JM**

Challenging the order dated 04.11.2014 in appeal No. 55/2013-14 passed by the learned Commissioner of Income Tax (Appeals)-XXVIII, New Delhi ("Ld. CIT(A)"), for assessment year 2007-08, Deloitte Haskins & Sells ("the assessee") preferred this appeal.

2. Brief facts of the case are that the assessee is a Chartered Accountant firm and had shown income under the heads income from profession and short term capital gains. For the assessment year 2007-08, they filed return of income on 11.11.2007 showing Profit and gains of

business amounting to Rs 4,98,90,093/- and Short term capital gain of Rs 10,87,868/-. The Profit and Gain of business amounting to Rs 4,98,90,093/- was adjusted against brought forward losses from the earlier years and therefore total income was returned at Rs 10,87,868/- being short term capital gains. Brought forward losses claimed in the returned income amounted to Rs. 5,38,53,703. However, the losses set-off from Profit and Gain of business amounted to Rs 4,98,90,093/- and those carried forward to be set-off in future years amounted to Rs. 39,63,610. The return so filed was revised on 26.03.2009, showing total income at Rs 10,87,868/-. The tax return was revised to give effect to addition made by Assessing Officer in the assessment year 2006-07 on account of interest on income tax amounting to Rs. 37,52,043/-. Return was revised to change carry forward of losses at Rs. 2,11,567 (Rs. 39,63,610 - Rs. 37,52,043). In revised return, brought forward losses were claimed at Rs 5,01,01,660/- (all pertaining to AY 2006-07). However, the losses set-off from Profit and Gain of business amounted to Rs. 4,98,90,093 and those carried forward to be set-off in future years amounted to Rs. 2,11,567. The Assessing Officer, however, completed the assessment u/s. 143(3) on 30.12.2009, determining total income of assessee at Rs.3,92,04,485/- by making addition of Rs.6,64,276/- on account of FBT expenses booked in the profit and loss account, Rs.1,19,39,046/- on account of client deposit received and Rs.1,00,27,303/- on account of receipts not shown as income. Assessee preferred appeal before the Id. CIT(A), who after considering the submissions of the assessee confirmed the addition made on account of FBT expenses booked in profit and loss account, but reduced the additions on account of client deposit received and the receipts not

shown as income to Rs. 43,789/- and Rs.80,48,137/- respectively. The Assessing Officer, therefore, initiating penalty proceedings u/s. 271(1)(c) by issuing notice u/s. 274 read with section 271 of the Act on 20.09.2012 and being not satisfied with the submissions of the assessee, imposed a penalty of Rs.48,93,726/- u/s. 271(1)(c) of the Act.

3. Aggrieved by such penalty, assessee preferred appeal before the Ld. CIT(A) and contended that no penalty was warranted as the assessee made a claim under a *bona fide* belief and all the relevant facts were disclosed in ITR and financial statements of the assessee company. CIT(A), however, partly allowed the appeal of the assessee by deleting the penalty only on the addition of Rs.75,978/- made on account of payment to one of its clients, AF Ferguson & Co. Aggrieved, the assessee is in appeal before us.

4. Ld. AR submitted at the outset that in this matter, there is neither concealment of income nor furnishing of inaccurate particulars thereof inasmuch as all the material particulars necessary for assessment were furnished along with ITR. While drawing our attention to the assessment order, penalty order and the notice issued under section 274 read with section 271 of the Act, further argument of the Ld. AR is in respect of the satisfaction of the Assessing Officer and basing his stand on the decisions of the Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565, Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 taxman.com 241 (Kar) and also the decision of the Hon'ble jurisdictional High Court in the case of Ld. PCIT vs. Sahara India Life Insurance Co Ltd in ITA No. 475 and batch of 2019, the Ld. AR submitted that the penalty cannot be sustained.

5. Per contra, placing reliance on the decision of the Hon'ble Madras High Court in the case of Sundaram Finance Ltd vs. CIT (2018) 403 ITR 407 (Madras), Ld. DR submitted that the assessee understood the purport of the notice and without raising any objection whatsoever they have participated in the penalty proceedings as well as the proceedings before the Ld. CIT(A) and, therefore, no prejudice was caused to the case of the assessee. He therefore, prayed to dismiss the appeal.

6. We have gone through the record in the light of the submissions made on either side. It could be seen from the assessment order that the learned Assessing Officer proposed the proceedings under section 271(1)(c) of the Act for concealing the particulars of income and furnishing of inaccurate particulars thereof. When it came to the notice issued under section 274 read with section 271 of the Act, such a notice does not specify whether it is for concealment of income or for furnishing of inaccurate particulars thereof, against which the assessee had to defend itself. Order under section 271(1)(c) of the Act narrates that the penalty was leviable under section 271(1)( c ) of the Act for concealment of income and furnishing of inaccurate particulars thereof. In this fact situation we shall refer to the decisions relied upon by the Ld. AR.

7. In the case of *CIT vs Manjunatha Cotton & Ginning Factory*, 359 ITR 565 (Kar), vide paragraph 60, the Hon'ble Karnataka High Court has held as follows :-

*"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.”*

8. In Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 taxman.com 241 (Kar) the Hon'ble Karnataka High Court Considered the question of law as to,-

*“Whether, omission if assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?”*

9. And the Hon'be High Court answered the same in favour of the assessee observing that:

*“The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short ‘the Act’) to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of [COMMISSIONER OF INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY](#) (2013) 359 ITR 565. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed.”*

10. The Special Leave Petition filed by the Revenue challenging the aforesaid judgement of the High Court was dismissed by the Hon’ble Supreme Court holding:

*“We do not find any merit in this petition. The special leave petition is, accordingly, dismissed.”*

11. In PCIT vs. Sahara India Life Insurance Company Limited case ITA No 475/2019 and batch order dated 02/08/2019, Hon’ble Delhi High Court, upheld the view taken by the Tribunal basing on the decision of the Hon’ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra) and SSA’s Emerald Meadows (supra) wherein it was held that the notice issued by the learned Assessing Officer would be bad in law if it did not specify under which limb of section 271(1)(c) of the Act the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or for furnishing of inaccurate particulars thereof. Relevant observations of the Hon’ble High Court read that,-

*“21. The Respondent had challenging 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 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 judgement 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 of 2016 by order dated 5<sup>th</sup> August, 2016.*

*22. On this issue again this court is unable to find any error having been committed by the ITAT.”*

12. It is, therefore, clear that for the AO to assume jurisdiction u/s 271(1)(c), proper notice is necessary and the defect in notice u/s 274 of the Act vitiates the assumption of jurisdiction by the learned Assessing Officer to levy any penalty. In this case, facts stated supra, clearly establish that the notice issued under section 274 read with 271 of the Act is defective and, therefore, we find it difficult to hold that the learned AO rightly assumed jurisdiction to pass the order levying the penalty. As a consequence of our findings above, we direct the Assessing Officer to delete the penalty in question.

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

**Order pronounced in the Open Court on 4<sup>th</sup> March, 2020.**

**Sd/-  
(G.S. PANNU)  
VICE PRESIDENT**

**Sd/-  
(K.NARASIMHA CHARY)  
JUDICIAL MEMBER**

Dated: 04/03/2020