

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER

ITA No.3175/Bang/2018
Assessment year: 2011-12

Shri Ramesh Mysore Anantha Swamy, 31, 2 nd Cross, Maruthi Layout, RMV 2 nd Stage, Bengaluru – 560 094. PAN: AGVPA 0378A	Vs.	The Income Tax Officer, Ward 13(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Pratibha R., Advocate
Respondent by	:	Smt. R. Premi, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	09.06.2020
Date of Pronouncement	:	10.06.2020

ORDER

Per N.V. Vasudevan, Vice President

This is an appeal by the Assessee against the order dated 19-09-2018 of CIT(A)-2, Bengaluru, relating to AY 2011-12. In this appeal the Assessee has challenged the order of the CIT(A) whereby the CIT(A) confirmed the order of the AO imposing penalty on the Assessee u/s.271(1)(c) of the Income Tax Act, 1961 (Act).

2. The facts and circumstances under which penalty was imposed on the Assessee by the AO are that the Assessee who is a salaried employee and worked with two different Companies in the FY 2010-11 relevant to the AY 2011-12 as per the following details:-

- 1) Honeywell Automation India Ltd.
- 2) Schneider Electric India Pvt. Ltd.

Sl No.	Name and address of the company	Period worked	Emoluments received (Rs.)
1	Honeywell Automation India Ltd.	01.40.2010 to 30.09.2010	6,51,344
2	Schneider Electric India Pvt. Ltd.	01.10.2010 to 31.03.2011	13,27,103
	Total emoluments received		19,78,447

3. The assessee while filing his return of income has declared the salary of Rs.7,84,124. However, he did not declare the full and correct salary received from both the companies. The AO completed the assessment by taking the salary of Rs.19,78,447 received by the assessee from both the companies.

4. In respect of the addition made as aforesaid, the AO initiated penalty proceedings u/s.271(1)(c) of the Income-tax Act, 1961 [the Act] by observing in the order of assessment by observing as follows:-

“This attracts penalty under Sec.271(1)(c) of Income Tax Act.”

Even in the order of Assessment, the AO did not specify as to whether the Assessee is guilty of concealing particulars of income or furnishing inaccurate particulars of income.

5. The AO issued a show cause notice u/s.274 of the Act (copy of the same is at page-4 of the paper book filed by the Assessee). In the said show cause notice also the AO has not mentioned the specific charge and the relevant column in the show cause notice does not strike off or delete the irrelevant portion as to whether the charge against the Assessee is concealing particulars of income or furnishing inaccurate particulars of income.

6. In reply to the show cause notice, the Assessee submitted that he had given two Form No.16 from two employers to the representative who filed the return of income, but the representative declared income only one on the basis of one Form No.16 and he ignored to mentioned the particulars of income from employer Schneider Electric India Pvt.Ltd. The Assessee pleaded that the non-disclosure was unintentional and that in the assessment proceedings when the mistake was realized, the same was corrected without any demur. It was not a case of either concealment or furnishing inaccurate particulars, but due to bonafide mistake.

7. The AO proceeded to impose penalty on the Assessee which was confirmed by the CIT(Appeals). Against the order of CIT(A), the Assessee is in appeal before the Tribunal.

8. We have heard the submissions of the learned counsel for the Assessee who submitted that the show cause notice issued u/s.274 of the Act before imposing penalty does not specify as to whether the Assessee is guilty of having "furnished inaccurate particulars of income" or of having "concealed particulars of such income". He pointed out that the printed show cause notice does not strike out the irrelevant portion viz., "furnished inaccurate particulars of income" or "concealed particulars of such income". He drew our attention to a decision of the Hon'ble Karnataka High Court in the case of *CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 218 Taxman 423 (Kar.)* wherein it was held that if the show cause notice u/s.274 of the Act does not specify as to the exact charge viz., whether the charge is that the Assessee has "furnished inaccurate particulars of income" or "concealed particulars of income" by striking out the irrelevant portion of printed show cause notice, then the imposition of penalty on the basis of such invalid show cause notice cannot be sustained. The learned DR relied on the order of the CIT(A).

9. We have considered the rival submissions. The argument of the Assessee is that the show cause notice u/s.274 of the Act which is in a printed form does not strike out as to whether the penalty is sought to be levied on the assessee for “furnishing inaccurate particulars of income” or “concealing particulars of such income”. On this aspect, we find that in the show cause notice u/s.274 of the Act, the AO has not struck out the irrelevant part. It is therefore not spelt out in the show cause notice as to whether the penalty proceedings are sought to be levied for “furnishing inaccurate particulars of income” or “concealing particulars of such income”. The Hon’ble Karnataka High Court in the case of *CIT & Anr. v. Manjunatha Cotton and Ginning Factory, 359 ITR 565 (Karn)*, has held that notice u/s. 274 of the Act should specifically state as to whether penalty is being proposed to be imposed for concealment of particulars of income or for furnishing inaccurate particulars of income. The Hon’ble High court has further laid down that certain printed form where all the grounds given in section 271 are given would not satisfy the requirement of law. The Court has also held that initiating penalty proceedings on one limb and find the assessee guilty in another limb is bad in law. It was submitted that in the present case, the aforesaid decision will squarely apply and the order imposing penalty has to be held as bad in law and liable to be quashed.

9. The Hon’ble Karnataka High Court in the case of *CIT vs. SSA’s Emerald Meadows in ITA No.380 of 2015 dated 23.11.2015* wherein following its own decision in the case of *CIT vs Manjunatha Cotton and Ginning factory (2013) 359 ITR 565* took a view that imposing of penalty u/s 271(1)(c) of the Act is bad in law and invalid for the reason that the show cause notice u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income. The Id. Counsel further brought to our notice that as against the decision of the Hon’ble Karnataka High Court the

revenue preferred an appeal in *SLP in CC No.11485 of 2016* and the Hon'ble Supreme Court by its order dated 05.08.2016 dismissed the SLP preferred by the department.

10. As far as the decision of the Hon'ble Supreme Court in the case of *Amitabh Bachchan 384 ITR 200 (SC)* referred to by the learned CIT(A) in the impugned order is concerned, we are of the view that the observations of the Hon'ble Supreme Court were in the context of proceedings u/s.263 of the Act, which cannot be compared to or equated with penalty proceedings u/s.271(1)(c) of the Act.

11. We have already observed that the show cause notice issued in the present case u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income. The show cause notice u/s 274 of the Act does not strike out the inappropriate words. In these circumstances, we are of the view that imposition of penalty cannot be sustained. The plea of the Id. Counsel for the assessee which is based on the decisions referred to in the earlier part of this order has to be accepted. We therefore hold that imposition of penalty in the present case cannot be sustained and the same is directed to be deleted.

12. In the result the appeal of the assessee is accordingly allowed.

Pronounced in the open court on this 10th day of June, 2020.

Sd/-

(B R BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 10th June, 2020.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.