

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "C", MUMBAI**

**BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 1181/MUM/2019  
Assessment Year: 2014-15**

Pavile Projects Private Limited, 167, 1 <sup>st</sup> Floor, Readymoney Terrace, Dr. Annie Besant Road, Worli, Mumbai PAN: AAACP5968R	<b>Vs.</b>	The Deputy Commissioner of Income Tax 7(3)(1), Aaykar Bhavan, M.K. Road, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Firoze Andhyarujina &  
Shri Harsh Kapadia (ARs)

Revenue by : Shri Rajesh Kumar Mishra (DR)

Date of Hearing: 02/03/2020  
Date of Pronouncement: 20/05/2020

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against the order dated 31.10.2018 passed by the Ld. Commissioner of Income Tax (Appeals) (for short 'the. CIT (A) 13, Mumbai, for the assessment year 2014-15, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the penalty order passed u/s 271 (1) (c) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee engaged in the business of manufacturing of dresses, garments and bearing apparels etc. filed its return of income declaring loss at Rs. 42,79,895/-. The AO passed assessment order u/s 143 (3) of the Act the total income of the assessee at Rs. 1,36,710 after making addition on account of disallowance of expenses amounting to Rs. 42,80,234/-. Accordingly, the AO initiated penalty proceedings u/s 271 (1) (c) of the Act and levied penalty of Rs. 14,40,727/- for furnishing inaccurate particulars of its income. In the first appeal, the Ld.CIT (A) confirmed the penalty levied by the

AO. The assessee is in appeal before the Tribunal against the said findings of the Ld. CIT (A).

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds of appeals:

- “1. On the facts and circumstances of the case, and in law, the learned CIT (A) erred in confirming the validity of the impugned penalty order passed under section 271 (1) (c) of the Income Tax Act, 1961 (‘the Act’) by the learned Assessing Officer.
2. On the facts and circumstances of the case, and in law, the learned CIT (A) erred in confirming penalty levied by the assessing officer under section 271 (1) (c) of the Act.
3. The learned CIT (A) failed to appreciate and ought to have held that impugned penalty order passed under section 271 (1) (c) of the Act was invalid and bad in law, since the notice issued under section 274 of the Act is not discernible as to whether the penalty proceedings were initiated for ‘furnishing of inaccurate particulars of income’ or concealment of income’ under the facts and in the circumstances of the appellant’s case.
4. He also failed to appreciate that the Appellant has not furnished any inaccurate particulars of income.
5. The learned CIT (A) further failed to appreciate and ought to have held that to determine allowability of an ‘expenditure’ or whether an assessee is conducting any ‘business’, it is not necessary that any income should in fact have been earned by the assessee.
6. He also failed to appreciate that merely because the Appellant had claimed certain expenditure, which was not accepted or was not acceptable to revenue, that by itself would not attract penalty under section 271 (1) (c) of the Act.  
The Appellant therefore prays that the impugned penalty order be quashed.”

4. The assessee has challenged the impugned order *inter alia* on the legal ground that the impugned order is bad in law as the AO initiated the penalty proceedings by issuing notice u/s 274 r.w.s. 271 (1) (c) in a mechanical manner without application of mind. The Ld. counsel for the assessee submitted before us that the Ld. CIT (A) has failed to appreciate that since the notice issued u/s 274 of the Act is not clear as to whether penalty proceedings were to be initiated for furnishing of inaccurate particulars of income or

concealment of income, the order passed under section 271 (1) (c) of the Act is invalid and bad in law. The Ld. counsel invited our attention the copy of notice dated 24.10.2016 issued u/s 274 r.w.s. 271 (1) (c) of the Act, which shows that the AO sent the notice without striking off the inapplicable portion of the contents of notice printed on a standard proforma. The Ld. counsel relying on the judgment of the Hon'ble Bombay High Court in the case of *CIT vs. Samson Perinchery 392 ITR 4 (Bombay)* submitted that failure on the part of the AO to state the specific charge on which the penalty was proposed to be levied would render the penalty order invalid. The Ld. counsel for the assessee further submitted that the Mumbai Benches of the Income Tax Appellate Tribunal (The Tribunal) have deleted the penalty levied by the AO after issuing notice u/s 274 r.w.s 271 of the Act in a mechanical manner without striking off the inapplicable/irrelevant portion printed on standard format in the following cases.

1. *M/s G.L. Pharma & Associates vs. ITO, ITA No. 5860/Mum/2018, A.Y. 2011-12*
2. *Sapna N. Jhaveri vs. ITO, ITA No. 5017/Mum/2018, A.Y. 2009-10.*
3. *Kasturlal Sheth vs. Joint Commissioner of Income Tax, ITA Nos. 4463 to 4466/Mum/2018, AYs 1997-1998 to 2001-2002*
4. *Hiralal Kalpu Gupta vs. ITO, ITA No. 7446/Mum/2017, AY 2012-13.*
5. *Meherjee Cassinath Holdings (P.) Ltd., vs. Assistant Commissioner of Income Tax, IT Appeal No. 2555 (Mum) of 2012, AY 2008-09.*

5. The Ld. counsel further pointed out that in the assessment order AO has only proposed to issue notice u/s 274 r.w.s. 271(1) of the Act, without mentioning whether the assessee has concealed its income or furnished inaccurate particulars of income. In view of the aforesaid facts and circumstances of the case and evidence on record, the Ld. counsel submitted that the impugned order is liable to be set aside.

6. On the other hand, the Ld. Departmental Representative (DR) supporting the order passed by the Ld. CIT (A) submitted that since the assessee has participated in the proceedings, no prejudice has been caused due to non-

striking off of the irrelevant portion of the standard notice. Hence, there is no infirmity in the order passed by the Ld. CIT (A) to interfere with.

7. We have heard the rival submissions of the parties and perused the material on record including the cases relied upon by the parties. As is clear from the copy of notice at page 2 of the Paper Book that the AO had issued the notice u/s 274 r.w.s. 271 (1) (c) of the Act without striking off the irrelevant/inapplicable portion on the standard format. As pointed out by the Ld. counsel, the AO can initiate penalty proceedings against the assessee once he is satisfied that there is concealment of income or furnishing of inaccurate particulars of income or both. The Hon'ble Bombay High Court has held in the case of *CIT vs. Samson Perinchery (supra)* that concealment of income and furnishing inaccurate particulars of income carry different connotations, therefore, the order imposing penalty has to be made only on ground on which penalty proceedings have been initiated. Hence, satisfaction of AO with regard to the violations u/s 271 (1) (c) is essential for initiating proceeding u/s 271 (1) (c) of the Act. The Hon'ble Bombay High Court has considered the judgment of the Hon'ble Karnataka High Court in the case of *CIT vs. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Karnataka)*, while dealing with the similar issue in the case of *Samson Perinchery (supra)*. The observations of the Hon'ble Karnataka High Court read as under:-

*"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 as case of furnishing of inaccurate particulars. The apex court in the case of Ashok Pai [ 2007] 292 ITR 11 (SC) 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 Manu Engineering reported in 122 ITR 306 and the Delhi High Court in the case of Virgo Marketing P. Ltd., reported in 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.”*

8. Further as pointed out by the Ld. counsel the coordinate Benches of the Mumbai Tribunal have decided the identical issues in favour of the assessee in the cases of *M/s G.L. Pharma & Associates vs. ITO*, *Sapna N. Jhaveri vs. ITO*, *Kasturlal Sheth vs. Joint Commissioner of Income Tax*, *Hiralal Kalpu Gupta vs. ITO*, and *Meherjee Cassinath Holdings (P.) Ltd., vs. Assistant Commissioner of Income Tax*, referred above. In our considered view, since the AO has issued the notice u/s 274 r.w.s. 271 of the Act in a mechanical manner without striking off the inapplicable portion of the notice printed on standard format, the impugned order passed by the Ld. CIT(A) is not sustainable in law. Hence, we find merit in the contention of the Ld. counsel. We therefore, respectfully following the ratio laid down by the Hon'ble High Courts discussed above, decide this ground of appeal in favour of the assessee and set aside the findings of the Ld. CIT(A). Accordingly, we direct the AO to delete the penalty levied u/s 271(1)(c) of the Act.

9. Since we have decided the legal ground in favour of the assessee and allowed the appeal, we do not consider it necessary to decide the grounds raised on merits

In the result, appeal filed by the assessee for assessment year 2014-2015 is allowed.

Order pronounced on 20<sup>th</sup> May, 2020 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 20/05/2020

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**