



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK ' SMC' BENCH, CUTTACK**

BEFORE S/SHRICHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA Nos.191, 192 & 193/CTK/2020

Assessment Years : 2010-2011, 2012-13 & 2014-15

Sri Vaibhav Raonka, Plot No.49, Ashok Nagar, Bhubaneswar.	Vs.	ITO, Ward -4(1), Bhubaneswar.
PAN/GIR No.		
(Appellant)	..	(Respondent)

Assessee by : Shri S.K.Agarwal, AR
Revenue by : Shri S.C.Mohanty, DR

Date of Hearing : 30 /3/ 2021
Date of Pronouncement : 11/5/2021

ORDER

These are appeals filed by the assessee against the separate orders of the CIT(A)-2, Bhubaneswar all dated 24.9.2020 for the assessment years 2010-2011, 2012-13 & 2014-15, respectively .

2. In all the appeals, the grievance of the assessee is that the Id CIT(A) is not justified in confirming the levy of penalty u/s.271(1)(c) of the Act in respective assessment years as under:

- | | | | |
|------|--------------|---|---------------|
| i) | A.Y. 2010-11 | - | Rs.1,67,151/- |
| ii) | A.Y. 2012-13 | - | Rs.6,67,309/- |
| iii) | A.Y. 2014-15 | - | Rs.1,49,627/- |

for furnishing of inaccurate particulars of income. He also submitted that the Id CIT(A) in the impugned order observed that the contention of the assessee that improper notice was issued to the assessee for the first time during appellate proceedings and this challenge was never made before the AO. Ld A.R. submitted that the penalty imposed on the assessee deserves to be deleted.

4. Ld A.R. also referred to various decisions in support of his case as under:

- i) Meherjee Cassinath Holding Pvt Ltd vs ACIT, 155 DTR (Mum)143
- ii) CIT vs SSA's Emerald Meadows, 73 Taxmann.com 248 (SC)
- iii) CIT vs Shree Bajrang Trading & Supply Co, 187 ITR 299 (Cal)
- iv) CIT vs Anwar Ali (1970) 76 ITR 696 (SC)
- v) Madhushree Gupta vs Union of India & Anr, 317 ITR 107(Del)
- vi) Samapika jena vs ACIT, in ITA Nos.53 to 57/CTK/2019 order dated 8.1.2020.

5. On the other hand, Id Sr DR supported the orders of the Id CIT(A).

6. I have considered the rival submissions and perused the orders of the AO as well as the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited at the Bar. I find the issue to be decided in the grounds raised by the assessee is regarding the validity of initiation of penalty proceedings in absence of non-

359 ITR 565 (Kar) observed that the levy of penalty has to be clear as to the limb under which it is being levied. As per Hon'ble High Court, where the Assessing Officer proposed to invoke first limb being concealment, then the notice has to be appropriately marked. The Hon'ble High Court held that the standard proforma of notice under section 274 of the Act without striking of the irrelevant clauses would lead to an inference of non-application of mind by the Assessing Officer. The Hon'ble Supreme Court in the case of Dilip N. Shroff vs. JCIT, 291 ITR 519(SC) has also noted that where the Assessing Officer issues notice under section 274 of the Act in the standard proforma and the inappropriate words are not deleted, the same would postulate that the Assessing Officer was not sure as to whether he was to proceed on the basis that the assessee had concealed the particulars of his income or furnished inaccurate particulars of income. According to the Hon'ble Supreme Court, in such a situation, levy of penalty suffers from non-application of mind.

8. I also find that on similar facts, this Bench of the Tribunal, while considering the notice issued u/s.271(1)(c) of the Act, in the case of Sri Pabitra Mohan Samal, vs CIT in ITA Nos.154 & 155/CTK/2020 for A.Y.s 2010-11 & 2015-16 dated 5.3.2021 has held as under:

3. At the outset, Id. AR of the assessee drew our attention to the notice issued by the AO u/s.271(1)(c) of the Act dated 26.03.2013 for A.Y.2010-2011 and notice dated 25.03.2014 for A.Y.2011-2012, copy of which are placed on record and pointed out therefrom that in the said notice, the Assessing Officer has stated as under:

"2. This appeal has been filed raising the following substantial questions of law:

- (1) 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?
- (2) (2 Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in. holding that the penalty notice under Section 274 r.w.s. 271(1)(c) is had in law and. invalid in spite the amendment of Section 271(1 B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?
- (3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued, under Section 274 without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?

3. 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 01 the derision of the Division Bench of this Court rendered In the case of COMMISSIONER or INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565.

4. 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." .

9. Bare perusal of the notice issued u/s 271(1)(c) of the Act apparently goes to prove that the Assessing Officer initiated the penalty ITA Nos.154&155/CTK/2020 5 proceedings by issuing the notice u/s 274/271(1)(c) of the Act without specifying whether the assessee has concealed "particulars of income" or assessee has furnished "inaccurate particulars of income", so as to provide adequate opportunity to the assessee to explain the show cause notice. Rather notice in this case has been issued in a stereotyped manner without applying any mind which is

case of CIT Vs. Laxman Das Khandelwal, [2019] 108 taxmann.com 183 (SC) is not applicable in the present case.

13. Further, the Id. DR of the assessee has also relied on the judgment of the Hon'ble Apex Court in the case of Sundaram Finance Limited Vs. DCIT (2018) 259 TAXMAN 0220 (SC) against the decision of Hon'ble Madras High Court, which has been decided in favour of the Revenue is applicable only for the jurisdictional High Court because the Special Leave Petition has been dismissed by stating as "The civil appeal of the assessee is dismissed with no order as to costs." In the dismissal of appeal against the High Court of Madras, there is no detailed order. We also observed in that case, the impugned issue was raised by the assessee before the Hon'ble High Court after lapse of 10 years. In this case the assessee is contesting this issue right from the First Appellate Authority. Therefore, the case law relied on by the Id. DR is also not applicable in the present case in hand. The Id. DR also tried to distinguish the judgment of the Hon'ble Jurisdictional High Court in the case of Ananta Gopal Karatkal Vs. Income Tax Officer, Balasore, ITA No.30 of 2005, dated 10.04.2019, but he could not succeed. For completeness of our order, we would like to reproduce the observations of the Hon'ble High Court as under :-

"10.04.2019 Heard learned counsel for the appellant and learned counsel for the respondent.

By way of this Appeal, the appellant-assessee has challenged the judgment and order of the Tribunal whereby the Tribunal has dismissed the Appeal imposing penalty.

Learned counsel for the appellant referring to the recording in the assessment order with the hand written contended that the Assessing Officer has initiated a proceeding only under Section 271(1)(c) of the Income Tax Act, 1961 and notice came to be issued was in printed form wherein it has not been stated whether it was concealment of income or inaccurate income.

Learned counsel for the appellant relied upon the decision of the Karnataka High Court in the case of Commissioner of Income Tax and another versus 1. Manjunatha Cotton and ginning factory, 2. Manjunath Ginning and pressing, 3. Veerabhadrappa Sangappa and Co., 4. V.S. Lad and sons, 5. G.M. Exports as reported in [2013] 359 ITR 565 (Karn.) relying on the decision of the Hon'ble Supreme Court in CIT v. Reliance Petroproducts P.Ltd. : (2010) 322 ITR 158 (SC) paragraphs 35 & 46.

However, considering that the respondent disputed the same and relied upon two decisions of the Hon'ble Supreme Court, wherein SLP was dismissed. One is Sundaram Finance Ltd. versus Deputy Commissioner of Income-tax reported in [2018] 99 taxmann.com152 (SC), paragraphs 12 & 13 and in Jivanlal and Sons v. Assistant Commissioner of ITA NO.30 OF 2005 2 Income-tax reported in [2019] 103 taxmann.com208(sc). Taking

Copy of the Order forwarded to :

1. The Appellant : Sri Vaibhav Raonka, Plot No.49,
Ashok Nagar, Bhubaneswar
2. The Respondent. ITO, Ward -4(1),
Bhubaneswar
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack