

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.5882/Del/2019
Assessment Year: 2012-13

M/s. Garg Exports (India), 29/5, Nangia Park, Shakti Nagar, New Delhi	Vs.	ITO, Ward-35(2), New Delhi
PAN :AAAFG3071H		
(Appellant)		(Respondent)

Appellant by	Ms. Apoorva Bhardwaj, Adv.
Respondent by	Shri R.K. Gupta, Sr.DR

Date of hearing	28.06.2021
Date of pronouncement	30.06.2021

ORDER

PER O.P. KANT, AM:

This appeal has been filed by the assessee challenging the order dated 30/04/2019 passed by the learned Commissioner of Income Tax (Appeals)-12, New Delhi [in short 'the Ld. CIT(A)'], wherein penalty levied under section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') by the Assessing Officer has been sustained.

2. Before us, the Learned Counsel of the assessee filed additional grounds raised by the assessee, which are reproduced as under:

1. *That the assessee respondent craves to withdraw grounds of appeal No. 2 and 3 as preferred by the Appellant in the memorandum of appeal:*

"2. That the Ld. Commissioner of Income Tax (Appeals) -12, New Delhi, has erred in overlooking and in summarily rejecting the bank analysis submitted as additional evidence."

"3. That the Ld. Commissioner of Income Tax (Appeals)-12, New Delhi, has erred in rejecting rectification application submitted for additional evidence."

II. *The assessee respondent craves leave to raise the following additional grounds of appeal before Your Honour:*

"1. That the Ld. CIT(A) has failed to appreciate that the Ld. Assessing Officer has not recorded satisfaction in the Assessment Order as warranted by section 271 of the Income Tax Act, 1961 for initiation of penalty proceedings against the Appellant. As such, in absence of such satisfaction, the subsequent order levying penalty under section 271(l)(c) of the Act is bad in law and thus, may please be quashed.

2. That the Ld. CIT(A) has failed to appreciate that the Id. Assessing Officer had not specified in the notice under section 271(l)(c) r.w.s. 274 of the Act, whether the penalty proceedings were initiated for concealment of income or for furnishing of inaccurate particulars of income. As such, the penalty order under section 271(l)(c) of the Act is bad in law and may please be quashed."

In this regard it is further submitted that while filling the memorandum of appeal, the Appellant had duly requested vide Ground of appeal no. 4 before the Hon'ble Tribunal, to add, alter, vary or amend any of the ground of appeal and as such, in view of Ground of appeal no. 4, additional grounds undertaken herein above may please be permitted.

The aforesaid grounds of appeal raise legal issues, which does not involve any fresh investigation into the facts; facts already being on record. The assessee/ respondent relies, in this regard, on the decision of the Gauhati High Court in the case of Assam Company (India) Ltd.vs. CIT.: 256 ITR 423, wherein Their Lordships held that it is permissible on the part of the Tribunal to entertain a ground beyond those incorporated in the memorandum of appeal through the party urging the said ground had neither appealed before it nor had filed a cross objection in the appeal filed by the other party, provided the relevant facts on which such ground is founded are available on record.

Further, in view of the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT: 229 ITR 383 as also the decision in the case of Jute Corporation of India v. CIT: 187 ITR 688, the ground of appeal calls for being admitted and adjudicated on merits.”

3. Briefly stated facts of the case are that scrutiny assessment of the income for the year under consideration was completed on 03/03/2015 under section 144 of the Act, in view of non-filing of vital information called for by the Assessing Officer. The assessee had shown gross turnover of ₹ 45,94,809/- with gross profit rate of 23.11% in terms of section 44AD of the Act and after claiming interest to partners of ₹ 5,53,428/- and remuneration to partners of ₹ 3,94,800/-, declared net profit of ₹ 1,13,847/-. The Assessing Officer examined bank statement of the assessee and noticed that the assessee had deposited cash money of ₹ 79,36,046/- into bank accounts maintained with Canara Bank and ICICI bank . The Assessing Officer disallowed interest and remuneration to the partners. The Assessing Officer estimated net business income of the assessee at Rs.18,34,020/- and unexplained sundry creditors of ₹ 15,833/-. The Assessing Officer also initiated penalty proceedings under section 271(1)(c) of the Act. Against the appeal filed in quantum proceeding, the Learned CIT(A) allowed part relief to the assessee. In view of the decision of the Learned CIT(A), the Assessing Officer issued notice to the assessee for levy of penalty in respect of the addition sustained. After considering submission of the assessee, the Assessing Officer levied penalty vide his order dated 31/03/2018 @ 100% of the tax ought to be evaded, which has been worked out to ₹ 1,32,246/-. On further appeal, the Ld. CIT(A) sustained the penalty levied by the Assessing Officer. A rectification filed before the Ld. CIT(A) was

also rejected by the Learned CIT(A) vide his order dated 27/06/2019.

4. Before us, the Learned Counsel of the assessee addressing the additional ground submitted that same are legal in nature and no investigation of the fresh facts are required and, therefore, same might be admitted. The Learned DR opposed admission of the additional ground and submitted that same have not been adjudicated by the Learned CIT(A).

5. We have heard rival submission of the parties on the issue of admissibility of the additional ground. We find that both grounds are purely legal in nature and all the facts in relation to the additional ground raised are already available on record and no investigation of the fresh facts is required for adjudication of these grounds. Accordingly, in view of the settled principal in the case of National Thermal Power Co. Ltd. v. CIT **229 ITR 383** (SC), the additional grounds raised by the assessee are admitted.

5.1 In support of additional ground No.1, the learned Counsel of the assessee submitted that no satisfaction has been recorded for initiating the penalty proceedings by the Assessing Officer and therefore, in view of the decision CIT vs Ram Commercial Enterprises Ltd., (2001) 246 ITR 563 (Delhi High Court), the penalty should be deleted.

5.2 In support of ground No.2, the learned Counsel submitted that while initiating the penalty proceeding relevant charges either of concealment of income or furnishing of inaccurate particulars of income was not made clear in the assessment order as well as in the notice issued for initiating penalty proceedings. According to her, in view of lack of clarity of charges for penal

action, the penalty levied is void and not sustainable in law in view of the decision of the Hon'ble Karnataka High Court in the case of Commissioner of Income-tax Vs Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565, which has been further approved by the Hon'ble Supreme Court in the case of Commissioner of Income-tax Vs. SSA'S Emerald Meadows [2016] 73 taxmann.com 248 (SC)].

5.3 The Learned DR, on the other hand, relied on the order of the lower authorities.

5.4 We have heard rival submission of parties on the issue in dispute and perused the relevant material on record. We find that while initiating the penalty preceding, the Assessing Officer in the assessment order observed as under:

“4. Assessed u/s 144 (Ex-parte) at an income of Rs.18,49,850/-. Charge interest rules. Penalty proceedings u/s 271(1)(b) and 271(1)(c) have been initiated separately. Issue necessary forms.”

5.5 From the above paragraph, it can be inferred that there is no clarity of the charges for which penalty has been initiated. There is no mention, whether the penalty has been initiated for concealment of income or furnishing inaccurate particulars of income. In the notice dated 03/03/2015 for initiating penalty proceeding also the relevant part as to concealment of income or furnishing inaccurate particulars of income has not been ticked. In such circumstances, the assessee was not clear under which limb of section 271C of the Act, the penalty was initiated. The Hon'ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra) has held that while issuing the notice the Assessing Officer has to come to conclusion that

whether it is a case of concealment of income or furnishing of inaccurate particulars of income and sending printed forms where all grounds mentioned in section 271 are mentioned, would not satisfy requirement of law. The Hon'ble Supreme Court in the case of SSA'S Emerald Meadows (supra), has also upheld the finding in the case of Manjunatha Cotton and Ginning Factory (supra)

5.6 Respectfully, following the decision of the Hon'ble Karnataka High Court and Hon'ble Supreme Court, we are of the opinion that penalty levied is bad in law and accordingly we cancel the same. The additional ground No.2 of the appeal is allowed.

5.7 Since we have already allowed one of the additional grounds and penalty has been cancelled, we are not required to adjudicate upon the additional ground and regular ground raised by the assessee.

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

Order pronounced in the open court on 30th June, 2021

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 30th June, 2021.

RK/-(DIDS)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi