

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 6886/DEL/2017
[A.Y 2008-09]

Kay Jay Fincap Ltd
[Formerly known as Kay Jay Auto Ltd
Regd. Office: Sachidanand Farm House
Kishangarh Village, Near DDA Sports Complex
Lane Green Avenue, Vasant Kunj, New Delhi

Vs.

The Dy. C.I.T
Circle - 5(1)
New Delhi

PAN : AAACK 0163 H

[Appellant]

[Respondent]

Date of Hearing : 17.08.2021
Date of Pronouncement : 17.08.2021

Assessee by : Shri Anil Kumar Malhotra, CA

Revenue by : Ms. Mrinalini Sapra, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
Commissioner of Income Tax [Appeals] - 17, New Delhi dated
25.09.2017 pertaining to Assessment Year 2008-09.

2. The solitary grievance of the assessee is that the ld. CIT(A) erred in confirming the penalty of Rs. 47,63,806/- u/s 271(1)(c) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short].

3. At the very outset, the ld. counsel for the assessee drew our attention to the notice dated 27.12.2010 issued u/s 274 r.w.s 271 of the Act and pointed out that the notice is vague and is not decisive in respect of the charge levelled against the assessee - whether the penalty is being levied for furnishing inaccurate particulars of income or for concealment of income.

4. Representatives of both the sides were heard at length. Case records carefully perused.

5. We find that the impugned notice issued and served is as under:

3. करे जाधनेयम, 1961 की धारा 271 के साथ पढ़ी गई धारा 274 के अधीन नो
NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

I.T.N

Income Tax Office,
New Delhi

To
M/s. K. V. S. Co. Pvt. Ltd.
(Formerly known as K.V. Tax Auto. Ltd.)
Sachidanand Kanya House, Kishan Park, New Delhi

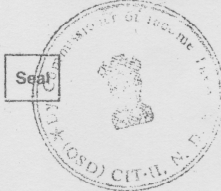
Dated: 22.12.2017

Whereas in the course of proceedings before me for the assessment year 2017-18 it appears to me that you :-

*have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961 dated 26.11.2017

*have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2, 3, 4 and 5.

You are hereby requested to appear before me at 11.00 A.M./P.M. on 26.12.2017 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.



[Signature]
Assessing Officer

Amit Kumar Siddhanta J. R. S.
Dy. Commissioner of Income Tax
(OSD), CIT-II, R. No. 13/5A
C.R. Building, New Delhi

*Delete inappropriate words and paragraphs.

[Signature]
28/12
CERTIFIED TRUE COPY
SAUMYA MISHRA
Deputy Commissioner of Income Tax
Circle-13(1), New Delhi

6. A bare perusal of the aforementioned notice shows that the Assessing Officer himself was not aware/certain as to whether he is issuing notice to initiate penalty proceedings either for concealment of income or for furnishing inaccurate particulars of income.

7. In our considered opinion, the extracted notice is vague and ambiguous, as the charge framed by the Assessing Officer is not clear and it is not possible for the person to explain the charge whether it is for concealment of particulars of income or for filing inaccurate particulars of income.

8. The Hon'ble Apex Court in case of CIT Vs. SSA's Emerald Meadows - (2016) 73 Taxmann.com 248 (SC), while dismissing the SLP filed by the Revenue quashing the penalty by the Tribunal as well as Hon'ble High Court on the ground of unspecified notice has held as under:-

"Section 274, read with section 271(l)(c), of the Income-tax Act, 1961 - Penalty - Procedure for imposition of (Conditions precedent) - Assessment year 2009-10 - Tribunal, relying on decision of Division Bench of Karnataka High Court rendered in case of CIT v. Manjunatha Cotton X Ginning Factory [2013] 359 1TR 565/218 Taxman 423/35 taxmann.com 250, allowed appeal of assesses holding that notice issued by Assessing Officer under section 274

read with section 271 (1)(c) was bad in law, as it did not specify under which limb of section 271 (1)(c) penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income - High Court held that matter was covered by aforesaid decision of Division Bench and, therefore, there was no substantial question of law arising for determination - Whether since there was no merit in SLP filed by revenue, same was liable to be dismissed - Held, yes [Para 2] [In favour of assessee.

9. Hon'ble Delhi High Court in case of Pr. CIT vs. Sahara India Life Insurance Company Ltd. (supra) while deciding the identical issue held as under:

"21. The Respondent had challenged the upholding of the penalty imposed under Sec. 271(1)(c) of the Act, which was accepted by the IT AT. It followed the decision of the 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 judgment in the subsequent order in Commissioner of Income Tax v. SSA's Emerald Meadows -73 Taxmann.com 241 (Kar), the appeal against which was dismissed by the Supreme Court of India in SLP No. 11485 by order dated 5th August 2016.

110. Following the decisions rendered in the cases of CIT vs. Manjunatha Factory, CIT vs. SSA's Emerald Meadows and Pr. CIT Vs Sahara India Life Insurance Company Ltd. (supra), we are of the considered view that when the notice issued by the AO is bad in law being vague and ambiguous having not specified under which limb of section 271(1)(c) of the Act, the penalty proceedings initiated u/s 271(1)(c) are not sustainable.

11. In view of what has been discussed above, following the decisions rendered by Hon'ble High Courts discussed in the preceding paras and without entering into the other aspects of the case, we are of the considered view that when the very initiation of the penalty by way of issuance of vague and ambiguous notice u/s 271(1)(c) read with section 274 of the Act without specifically charging the assessee if he has concealed the particulars of income or has furnished inaccurate particulars of such income, subsequent penalty proceedings are not sustainable, hence penalty levied by the AO and confirmed by the Id. CIT (A) is not sustainable and as such, the appeal filed by the assessee is allowed.

12. Respectfully following the decisions [supra] we direct the Assessing Officer to delete the penalty u/s 271(1)(c) of the Act amounting to Rs. 47,63,806/-.

13. In the result, the appeal filed by the assessee in ITA No. 6886/DEL/2017 is allowed.

The order is pronounced in the open court on 17.08.2021 in the presence of both the rival representatives.

Sd/-
[PAWAN SINGH]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 17th August, 2021

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	