

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "G" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER &
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.6758/Del/2017
Assessment Year : 2013-14**

M/s Shri Krishna Jewels Pvt. Ltd. C/o-Anil Jain DD & Co. 611, Surya Kiran Building, 19, Kg Marg, New Delhi-110001	vs	DCIT, Central Circle-25, Jhandewalan, New Delhi
PAN-AAECV1010E		
APPELLANT		RESPONDENT

Appellant by	Sh. Anil Jain, CA
Respondent by	Sh. H. K. Chaudhary, CIT-DR
Date of Hearing	21.09.2021
Date of Pronouncement	24.09.2021

ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 04.09.2017 of the learned CIT(A)-29, New Delhi, arising from the penalty order passed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter 'the Act') for the Assessment Year 2013-14.

2. The assessee has raised the following grounds:-

1. *That on the facts and circumstances of the case and the provision of law the Ld. CIT(A) has failed to appreciate that the penalty order passed u/s 271(1)(c) of the Income Tax Act, 1961 by the Ld. Assessing Officer is illegal and bad in law.*
2. *That on the facts and circumstances of the case and the provision of law the Ld. CIT(A) has failed to appreciate that the initiation of proceedings u/s 271(1)(c) is illegal and bad in law and consequently penalty order passed is also illegal and bad in law.*
3. *That on the facts and circumstances of the case and the provision of the law, the Ld. CIT(A) has erred in sustaining penalty of Rs.16,41,194/- under section 271(1)(c) of the Income Tax Act, 1961.*

3. Ground no.1 and 2 are regarding the validity of the initiation of penalty proceedings for want of specific charge in the show-cause notice as well as in the penalty order.

4. The Ld. AR of the assessee has submitted that the Assessing Officer while issuing the show-cause notice has not specified whether the penalty is proposed to be levy for furnishing of inaccurate particulars of income or for concealment of particulars of income. He has referred to show-cause notice issued by the Assessing Officer dated 30.03.2016 and submitted that the Assessing Officer has not specified the

charge for which the penalty was proposed to be levied. The AR has further submitted that even the penalty was imposed by the Assessing Officer while passing the order u/s 271(1)(c) of the Act for both the charges i.e. furnishing of inaccurate particulars of income or concealment of income. Thus, the Assessing Officer was not certain even at the time of levying the penalty as what default the assessee has committed for which the penalty was imposed. The Ld. AR has submitted that the initiation of the penalty proceedings u/s 271(1)(c) is illegal and bad in law, consequently, the penalty order u/s 271(1)(c) of the Act is liable to be quashed. In support of his contention, he has relied upon the Third Member decision of the Amritsar Benches of the Tribunal in the case of M/s HPCL Mittal Energy Ltd. vs Addl. CIT in ITA Nos.554 & 555/Asr/2014, reported in 81 taxmann.com 224 (Amr. Trib.)(TM) and submitted that the moot question before the Third Member was that what should be the nature of specification of the charge by the Assessing Officer at the stage of initiation of penalty proceedings and at the time of passing the penalty order. The Tribunal has held that even if the Assessing Officer is not certain at the time of initiation of

penalty proceedings whether it was a case of furnishing of inaccurate particulars of income or concealment of particulars of income, the Assessing Officer is required to levy the penalty on definite charge, which should be reflected in the penalty order as to whether the assessee is guilty of concealment of particular of income or furnishing of inaccurate particulars of income. Uncertain charge at the time of initiation of penalty must necessarily be substituted with conclusive default at the time of passing of the penalty order. The Ld. AR has thus submitted that in the impugned penalty order, the Assessing Officer was not certain as he has levied the penalty without giving a conclusive default. He has referred to the penalty order and submitted that the Assessing Officer has finally levied the penalty on concealment of particular of income/furnishing of inaccurate particulars of income, therefore, the penalty order passed by the Assessing Officer not based on a definite charge or default as it was at the time of initiation of the penalty proceedings then the impugned order passed by the Assessing Officer is not valid and liable to be quashed. He has also relied upon the decision of the Hon'ble Supreme Court in the case of

CIT vs Suresh Chandra Mittal, reported in 170 CTR 182. Thus, the Ld. AR has submitted that the Assessing Officer has not given a conclusive finding on the point of default for which the penalty was levied then the initiation of penalty as well as the penalty order is not valid and liable to be quashed. He has referred to the decision of the Hon'ble Karnataka High Court in the case of CIT vs Manjunatha Cotton & Ginning Factory, reported in 359 ITR 565 (Karn.) as well as the decision of the Hon'ble Supreme Court in the case of CIT vs M/s SSA's Emerald Meadows reported in 242 taxman 180 (SC).

5. On the other hand, Ld. CIT-DR has submitted that the Assessing Officer has initiated penalty on definite charge. He has referred to the assessment order and submitted that the Assessing Officer has made two additions while framing the assessment and initiated the penalty proceedings u/s 271(1)(c) of the Act for each addition for specific charge of concealment. In support of his contention he has referred to para 11 and 12 of the assessment order. He has further submitted that the Ld. CIT(A) has confirmed the penalty levied u/s 271(1)(c) of the Act by holding that the assessee has concealed the particulars of its

income. He has referred to para 5.3 of the Ld. CIT(A) and submitted that the once the order of the Assessing Officer passed u/s 271(1)(c) is merged with the order of the Ld. CIT(A), then the finding of the Ld. CIT(A) holding that the assessee has concealed the particulars of income satisfy the requirement of levy of penalty for a definite charge.

6. In rejoinder of the Ld. AR of the assessee has submitted that Ld. CIT(A) cannot substitute the order of the Assessing Officer so far as the charge for which the penalty was levied u/s 271(1)(c) of the Act.

7. We have considered the rival submissions as well as the relevant material on record. The assessee has challenged the validity of initiation of penalty proceedings as well as consequential penalty order passed u/s 271(1)(c) of the Act on the ground that the Assessing Officer has not specified whether the penalty is proposed to be levied for concealment of particulars of income or furnishing of inaccurate particulars of income. In support of his contention, he has relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs

SSA's Emerald Meadows (supra) and the decision of the Hon'ble Karnataka High Court in the case of CIT vs Manjunatha Cotton & Ginning Factory (supra), which was relied upon by the Hon'ble High Court and the SLP against which was dismissed by the Hon'ble Supreme Court. It is pertinent to note that the Hon'ble High Court as well as the Hon'ble Supreme Court in the case of M/s SSA's Emerald Meadows and the in the case of Dharmendra Textile has held that proceedings u/s 271(1)(c) of the Act is for civil liability and these are not for criminal proceedings. Therefore, *mens rea* is not an essential element of imposing the penalty for breach of the civil obligation or liability. It is also a settled proposition of law that the levy of penalty u/s 271(1)(c) of the Act is not automatic on any disallowance or addition made by the Assessing Officer but the conditions prescribed u/s 271(1)(c) are required to be satisfied for initiation of penalty proceedings as well as levy of penalty u/s 271(1)(c) of the Act. In the normal course, if the Assessing Officer has either disallowed the claim of expenditure or made any addition by rejecting the claim of the assessee then, the Assessing Officer is under statutory obligation to specify the default/charge for which the

penalty proceedings are initiated and penalty is proposed to be levied u/s 271(1)(c) of the Act. Failure on the part of the Assessing Officer to specify the default of assessee as well as charge whether the assessee has concealed the particulars of income or furnished inaccurate particulars of income would render the initiation of the penalty proceedings as well as the levy of penalty u/s 271(1)(c) of the Act is invalid and consequential order passed u/s 271(1)(c) of the Act is liable to be quashed. It is a settled proposition of law that if the penalty is initiated on one limb i.e. concealment of particulars of income or furnishing of inaccurate particulars of income and the finding in the penalty order for levying the penalty on the other limb is also bad in law. Therefore, the Assessing Officer has to give a definite finding about the default/guilty of the assessee attracting the penalty u/s 271(1)(c) of the Act while passing the penalty order.

8. In the case, in hand, the assessee filed the return of income on 28.09.2013 declaring total income of Rs.48,66,590/-. Thereafter, a survey operation u/s 133A of the Act was carried out at the business premises of the assessee on 19.12.2013 by the Investigation Wing-1(1) of the Department. A survey was

also conducted in case of 3 other companies of this group including the assessee company. During the post survey proceedings, the assessee in its statement dated 27.12.2013 surrendered an income of Rs.50 Lakhs for the Assessment Year under consideration. This income was surrendered by the assessee on account of peak credit on share application money received as accommodation entries for this year. The Assessing Officer proposed to make addition of Rs.50 Lakhs to which the assessee has agreed. Consequently, the Assessing Officer made the addition of Rs.50 Lakhs to the total income of the assessee. Apart from the addition of Rs.50 Lakhs as result of the survey conducted u/s 133A of the Act, the Assessing Officer has also made disallowance of Rs.3,11,306/- on account of property tax on the ground that the assessee has not shown any fixed assets in the balance sheet. The Assessing Officer has also recorded his satisfaction for initiation of penalty proceedings u/s 271(1)(c) for both these additions in para 11 and 12 as under:-

“11. In view of the above discussion and after careful examination of the information/documents filed by the assessee, an addition of Rs.50 Lakh is hereby made and added to the total income of the assessee.

Rs.50,00,000/-

In view of the above, I am satisfied that the assessee company has concealed the particulars of income, hence penalty proceedings u/s 271(1)(c) is initiated.

12. From the perusal of profit and loss account, it has been noticed that the assessee has debited an amount of Rs.3,11,306/- on account of property tax and shop rent of Rs.12,00,000/-. However, on perusal of schedule of fixed assets in the balance sheet for the year under consideration, no property has been found. Being confronted to this fact, the assessee failed to reply satisfactorily. Hence, disallowance of Rs.3,11,306/- under the head of property tax is hereby made.

Rs.3,11,306/-

In view of the above, I am satisfied that the assessee company has concealed the particulars of its income, hence penalty proceedings u/s 271(1)(c) is initiated.”

9. From the satisfaction recorded by the Assessing Officer in the assessment order, it is clear that the Assessing Officer proposed to initiate the penalty proceedings on the charge of the concealment of particulars of income. It is pertinent to note that the amount of Rs.50 lakhs as added by the Assessing Officer is not an outcome of an enquiry conducted during the assessment proceeding or any decision taken by the Assessing Officer to hold the same as undisclosed income of the assessee but the said addition is made by the Assessing Officer

on the basis of statement of the assessee recorded in post survey enquiry. Therefore, the addition was made on the basis of the surrendered made by the assessee and hence this addition and the nature of the addition was very much known to the assessee right from the time when the assessee surrendered this amount in the statement recorded during the post search enquiry. Therefore, this addition does not fall in the category where the Assessing Officer has made addition based on some enquiry or his decision but this addition was made on the basis of surrendered made by the assessee. Accordingly, the default and the charge for which the penalty was proposed to be levied was very much in the knowledge of the assessee being the surrendered made by the assessee. Further, the Assessing Officer has very much recorded the satisfaction in the assessment order and stated that the penalty proceedings u/s 271(1)(c) of the Act are initiated as the assessee has concealed the particulars of income. Therefore, to the extent of initiating penalty proceedings as well as levy of penalty proceedings u/s 271(1)(c) of the Act against addition of Rs.50 Lakhs based on the surrendered of the income by the assessee being accommodation

entries of share application money there is no failure on the part of the Assessing Officer to make assessee known about the default of the assessee and charge for which the penalty was proposed to be levied. Accordingly, to the extent of the levy of penalty against the addition of Rs.50 Lakhs, we do not find any error or illegality in the impugned orders of the Assessing Officer and the Ld. CIT(A).

10. As regards, the penalty levied against the addition of Rs.3,11,306/- by disallowing the claim of property tax, it is pertinent to note that this was addition made by the Assessing Officer by disallowing the claim of expenditure and therefore this addition does not fall in the category of concealment of the particulars of income. The assessee is having show room on lease and for which the assessee is paying rent of Rs.1 lakhs per month as well as the property tax. Therefore, even if the claim of the property tax is disallowed by the Assessing Officer, the same cannot be held to be the concealment of particulars of income but at the most it can be regarded as furnishing of inaccurate particulars of income. Therefore, initiation of penalty by the Assessing Officer on the charge of concealment of particulars of

income in respect of addition of property tax is incorrect charge. It would rendered the initiation of penalty proceedings to levy the penalty against the addition of Rs.3,11,306/- as invalid. Therefore, the penalty levied by the Assessing Officer in respect of Rs.3,11,306/- is not sustainable and liable to be deleted.

11. Ground No.3 is regarding the merits of levy of penalty of Rs.16,41,194/- u/s 271(1)(c) of the Act,.

12. On merits, the Ld. AR of the assessee has submitted that the addition so made by the Assessing Officer on the basis of surrender which is not voluntarily surrendered but under the compulsion. The Ld. AR has submitted that the Assessing Officer has not brought any material on record to show that the assessee had a criminal intent for showing the share application money. Therefore, the levy of penalty is not automatic and once, the assessee has furnished the explanation which is bona-fide, the penalty levied u/s 271(1)(c) is not justified. He has submitted that the Hon'ble Supreme Court in the case of CIT vs Suresh Chandra Mittal 177 CTR 182(SC) held that where the assessee has surrendered the income after persistent queries by

the Assessing Officer, the explanation of the assessee that he has declared income to buy peace of mind and to come out of waxed litigation could be treated as bona-fide and penalty levied u/s 271(1)(c) of the Act is not justified. The Ld. AR has thus submitted that the surrender was made by the assessee just to buy peace of mind and to avoid the litigation, the same would not attract the penalty proceedings u/s 271(1)(c) of the Act.

13. On the other hand, the Ld. DR has relied upon the orders of the authorities below and submitted that but for the survey proceedings, the assessee would not have surrendered this income of Rs.50 Lakhs for the year under consideration. Therefore, it is not voluntarily surrender made by the assessee but the surrender was made because of the enquiry conducted by the Investigation Wing during survey proceedings.

14. We have considered the rival submission as well as the material available on record. The assessee has not disputed the fact that a survey was conducted post filing of return of income and during the enquiry conducted by the Investigation Wing, the assessee surrendered the income on account of share

application money being accommodation entries out of which Rs.50 Lakhs was surrendered for the year under consideration. The said addition of Rs.50 Lakhs made by the Assessing Officer out of the surrendered made by the assessee has attained finality. The assessee has nowhere disputed the said surrender being made under coercive circumstances or under compulsion. Even otherwise, the surrender is not without any basis but the entry of share application money is very much in existence which was accepted by the assessee as accommodation entries. Therefore, there is no substance or merit in the contention of the Ld. AR that surrender was made by the assessee to buy peace of mind. Hence, the appeal of the assessee is devoid of any merit or substance so far as the levy of penalty against the addition of Rs.50 Lakhs.

15. Since, the levy of penalty against the disallowance of property tax of Rs.3,11,306/- is deleted on the legal issue, therefore, we do not proposed to take up this issue on merit.

14. In the result, the appeal of the assessee is partly allowed.

Above decision was pronounced in the open court on
24.09.2021.

Sd/-

**(R.K.PANDA)
ACCOUNTANT MEMBER**

Delhi/Date 24.09.2021

Sd/-

**(VIJAY PAL RAO)
JUDICIAL MEMBER**

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI