



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

**BEFORE S/SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.142/CTK/2020
Assessment Year :2012-13

DCIT, Corporate Circle-1, Bhubaneswar	Vs.	Kalinga Ferro Ispat Pvt Ltd., Giriraj Ratan Binani (Director) Nandan Apartments, Alipur Road, Kolkata
PAN/GIR No.AACCK 5533 D		
(Appellant)	..	(Respondent)

Assessee by : Shri P.K.Mishra/R.K.Jhunjubwalla, ARs
Revenue by : Shri M.K.Goutam, CIT (DR)

Date of Hearing : 29 /3/ 2022
Date of Pronouncement : 30/3/2022

ORDER

Per C.M.Garg, JM

This is an appeal filed by the revenue against the order of the CIT(A),1, Bhubaneswar dated 17.1.2020 for the assessment year 2012-13 .

2. The only grievance of the revenue is that the Id CIT(A) is not justified in deleting the penalty of Rs.7,89,59,610/- imposed u/s.271(1)(c) of the Act.

3. Facts of this case are that assessment was completed u/s.144 of the Act by the AO on a total income of Rs.7,34,40,790/-, inter alia, making

addition of Rs.8,11,21,500/- towards large share premium. The Assessing Officer also initiated penalty proceedings u/s.271(1)(c) against the addition towards share premium in the assessment order and levied penalty of Rs.2,63,19,870/-.

4. On appeal, the Id CIT(A) deleted the penalty on the ground that the quantum addition of Rs.8,11,21,500/- representing share premium receipts, in respect of which, penalty has been imposed, deleted by the Id CIT(A)-1, Bhubaneswar. Therefore, the imposition of penalty has become infructuous.

5. At the outset, Id A.R. of the assessee submitted that since the quantum addition has been deleted by the Id CIT(A), the penalty deleted by the CIT(A) is in order. At the outset, Id A.R. of the assessee by filing copy of notice issued u/s.271(1)(c) of the Act by the Assessing Officer dated 18.3.2015 submitted that the Assessing Officer in the said notices has stated as under:

“have concealed the particulars of your income.... or furnished “ inaccurate particulars of such income.”

4. He relied on the decision of Hon'ble Karnataka High court in the case of Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar), wherein, it has been observed that the levy of penalty has to be clear as to the limb under which it is being levied. He submitted that in this case, the AO was not

clear as to which limbs, the penalty has to be levied. 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. Since, this is lack in the penalty notice, in view of the decision of Hon'ble High Court in the case of Manjunatha Cotton & Ginning Factory (supra), the penalty has no legs to be leviable.

6. Ld CIT DR could not controvert the aforesaid submissions of the Id A.R. of the assessee.

7. We have heard the rival submissions and perused the record of the assessee. There is no dispute to the fact that the basis on which the penalty imposed, has been deleted by the Id CIT(A). Since the addition in quantum appeal, which was the very basis of levying the penalty, has been deleted by the CIT(A), therefore, the penalty order of Assessing Officer has no legs to stand. Even otherwise, it is not clear from the said notice issued u/s.271(1)(c) of the Act by the Assessing Officer whether the show cause is issued to the assessee for concealment of particulars of income or for furnishing inaccurate particulars of income as contended by Id A.R, the AO was not sure as to which limbs, the penalty has to be levied. Therefore, in view of the decision of Hon'ble Karnataka High court in the case of Manjunatha Cotton & Ginning Factory (supra), the penalty has to be deleted. We also find that Hon'ble Supreme Court in the case of CIT vs.

SSA's. Emarld Meadows dated 11th January, 2017 passed in Special Leave to Appeal (CC No.11485/2016) has held that Omission by the AO to explicitly specify in the penalty notice as to whether penalty proceedings are being initiated for furnishing of inaccurate particulars or for concealment of income makes the penalty order liable for cancellation. In view of this, we uphold the order of Learned CIT(A) deleting the penalty.

8. In the result, appeal filed by the revenue is dismissed.

Order pronounced on 30 /3/2022.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 30 /03/2022
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : DCIT, Corporate Circle-1,
Bhubaneswar
2. The Respondent. Kalinga Ferro Ispat Pvt Ltd.,
Giriraj Ratan Binani (Director)
Nandan Apartments, Alipur Road, Kolkata
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack