

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DLEHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 5141/Del/2019
Assessment Year: 2009-10**

Amar Nath Tyagi, A-7,
Duplex, Sect. 23, Sanjay
Nagar, Ghaziabad.

PAN:ABGPT3183J

(Appellant)

Vs. DCIT, Circle - 1,
Ghaziabad.

(Respondent)

Appellant by : Shri Sahil Sharma, Ld. Adv.
Respondent by : Shri Zahid Parvez, Ld. Sr. DR

Date of hearing : 08.06.2022
Date of order : .06.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 30.04.2019 impugned herein, passed by the learned Commissioner of Income-tax (Appeals)- Ghaziabad (in short 'Id. Commissioner') u/s. 250(6) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2009-10.

2. Brief facts, relevant for adjudication of this appeal, are that the Assesseeby declaring the total income of Rs.12,49,150/- had filed its return of income on dated 29.03.2016, which was processed u/s. 143(1) of the Act. Subsequently, the case was selected for scrutiny and statutory notices u/s. 143(2) and 142(1) were issued to the Assessee. During the course of assessment proceedings, the Assessing Officer noticed that the Assessee had shown to have sold a land property for a sale consideration of Rs.82,90,000/- showing its year of purchase as 1980 for the purpose of indexation and after claiming exemption u/s. 54F of the Act for construction of existing residential accommodation, declared the long-term capital gains at Rs. Nil. The Assessing Officer by observing that the bills and vouchers furnished by the Assessee in support of the construction made by Assessee are bogus and fictitious and, therefore, after disallowing the claim of exemption made by Assessee u/s. 54-F of the Act, computed the long-term capital gains at Rs.80,45,860/- vide assessment order dated 18.11.2016 as against income 'Nil' declared by the Assessee.

3. The Assesseebeing aggrieved challenged the assessment order in quantum appeal before the Id. Commissioner, who vide impugned order dismissed the appeal of the Assessee in limine as barred by limitation.

4. The Assessing Officer, thereafter, initiated penalty proceedings u/s. 271(1)(c) and issued notice u/s. 274 read with section 271 of the Act on dated 18.11.2016 and ultimately, vide order dated 31.05.2017,imposed a penalty of Rs.16,58,000/- equivalent to 100% of the tax sought to be evaded,on the premise that the Assessee has furnished inaccurate particulars of income to the extent of Rs.80,45,860/-.

5. The Assessee challenged the penalty order in appeal before the Id. Commissioner, who vide impugned order dated 30.04.2019 affirmed the penalty imposed by the Assessing Officer. Being aggrieved, the Assessee is in appeal before us.

6. At the outset it was argued by the learned counsel for the Assessee that in the instant case the notice issued u/s 271(1)(c) dated 18.11.2016 is vague, having not mentioned any limb of the penalty and, therefore, the penalty is not leviable. The Assessee in support of its contention also relied upon various judgments of the Hon'ble Apex Court and High Courts.

7. On the contrary the Ld. DR supported the orders passed by the authorities below and submitted that order under challenge does not suffer from any perversity, impropriety and/or illegality and hence needs no interference .

8. Heard the parties and perused the material available on record. The Assessee has challenged the penalty order on various grounds. In the instant case, the AO initiated penalty under section 271(1)(c) of the Act for 'concealing/ furnishing of particulars of Income and thereafter issued the notice u/s 274 read with 271(1)(c) of the Act without specifying the limb of the penalty and finally imposed the penalty for concealment by filling of inaccurate particulars of income. The Assessee challenged the Imposition of penalty mainly on the basis of notice itself, therefore we deem it appropriate to decide the legal issue involved in the instant case, instead of going into merits of the case.

8.1 The Hon'ble Apex Court in case of ***M/s. SSA's Emerald Meadows, (2016) 73 taxmann.com 248(SC)*** dismissed the

Special Leave Petition filed by the Revenue against the judgment rendered by Hon'ble High Court of Karnataka whereby identical issue was decided in favour of the assessee. Operative part of the judgment in case of *M/s. SSA's Emerald Meadows* (supra) decided by Hon'ble High Court of Karnataka is reproduced below:-

"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) 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 bad in law and invalid in spite of 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 upon the decision of the Division Bench of this Court rendered in the case of

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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."

8.2The Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory, 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 also held that the standard proforma of notice under section 274 of the Act without striking of the irrelevant clause would lead to an inference of non-application of mind by the Assessing Officer and levy of penalty would suffers from non-application of mind.

8.3. Even the Hon'ble High Court of Delhi in the case of M/s. Sahara India Life Insurance Company Ltd. 432 ITR 84 (Del.) while following the cases referred above, held as under:

"21. The Respondent had challenged the upholding of the penalty imposed under Section 271(1)(c) of the Act, which was accepted by the ITAT. 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 (2016) 73 Taxman.com 241(Kar), the appeal against which was dismissed by the Supreme Court of India in SLP No: 11485 of 2016 by order dated 5th August, 2016.

22. On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises. Thus, notice under Section 271(1)(c) r.w.s. 274 of the Act itself is bad in law. We, therefore, set-aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied.”

8.4 The penalty provisions of section 271(1)(c) of the Act are attracted, where the Assessee has concealed the particulars of income or furnished inaccurate particulars of such income. It is also a well-accepted proposition that the aforesaid two limbs of section 271(1)(c) of the Act carry different meanings. Therefore, it is imperative for the Assessing Officer to specify the relevant limb so as to make the Assessee aware as to what is the charge made against him so that he can respond accordingly.

8.5 In the background of the aforesaid legal position and, having regard to the manner in which the Assessing Officer has issued the notice dated 18.11.2016 under section 274 r.w.s. 271(1)(c) of the Act without specifying the limb under which the penalty proceedings have been initiated and proceeded with, apparently goes to prove that notice in this case has been issued in a stereotyped manner without applying mind which is bad in law, hence can not be considered a valid notice sufficient to impose penalty u/s 271(1)(c) of the Act and therefore we are of the considered view that under these circumstances, the penalty is not leviable as held by the various Court including Apex Court and hence, we have no hesitation to delete the penalty levied by the AO and affirmed by the Ld. Commissioner .

9. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in open Court on 27/06/2022.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-