

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C' NEW DELHI**

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

**ITA No. 2334/Del/2015  
Assessment Year: 2010-11**

Aimil Pharmaceuticals (I) Ltd.,  
2994/4, Gali No. 17,  
Ranjeet Nagar, New Delhi.

**PAN: AAACA6166D**

(Appellant)

Versus

Income-tax Officer,  
Ward 2(1), Noida.

(Respondent)

Appellant by : Shri V.K. Agarwal, Id. AR  
Ms. Shweta Bansal, Id. CA  
Respondent by : Shri Anuj Garg, Id. Sr. DR  
Date of hearing : 20.07.2022  
Date of order : 28.07.2022

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

This appeal has been preferred by the Assessee against the order dated 14.01.2015, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-I, New Delhi (in short "Ld. Commissioner"), whereby the penalty of Rs.36,72,755/- imposed by the Assessing Officer u/s. 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2010-11, was affirmed.

**2.** Brief facts, relevant for disposal of the instant appeal, are that the Assessee by filling its return of income on 14.10.2010 declared its income at 'Nil', which was taken into consideration by the AO who completed the assessment u/s. 143(3) of the Act at the net book profit of Rs.2,16,10,800/- after allowing set off of brought

forward book loss for F.Y. 2008-09 of Rs. 89,26,065/- under Section 115JB of the Act.

The Assessing Officer while noticing that the book profit as per part B- TI and TTI – computation of tax liability on total income of return of income- for assessment year 2010-11 is Rs.3,05,36,863/- whereas the assessee had shown income u/s. 115JB at 'Nil', also initiated penalty proceedings u/s. 271(1)(c) of the Act and issued notice dated 28.03.2013 u/s. 274 r.w.s. 271 of the Act for the reason that the Assessee has concealed the particulars of income or furnished inaccurate particulars of such income.

**2.1** The Assessing Officer ultimately imposed the penalty of Rs.36,72,755/- against the Assessee u/s. 271(1)(c) of the Act for furnishing of inaccurate particulars of its income on the grounds *“that non-declaration of the income under special provision of the Act amounting to Rs.2,16,10,800/- tantamount to concealment of income to that extent and the assessee is liable for imposition of penalty u/s. 271(1)(c) of the Act. Further it is a clear cut case for the levy of penalty u/s. 271(1)(c) for wrong furnishing of particulars of income and concealment of income.”*

**3.** The Assessee challenged the penalty order in appeal before the Id. Commissioner, who vide impugned order dated 14.01.2015 affirmed the penalty imposed by the Assessing Officer. Being aggrieved, the Assessee is in appeal before us.

**4.** 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 28.03.2013 is vague, having not specified any particular 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.

**5.** 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.

**6.** 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 without recoding any satisfaction, initiated the penalty proceedings under section 271(1)(c) of the Act and issued the notice 28.03.2013 u/s 274 read with 271(1)(c) of the Act for 'concealing the particulars of income or furnishing inaccurate particulars of Income, without specifying any particular limb of the penalty and finally imposed the penalty for furnishing 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 which relates to validity of Notice issued u/s 274 of the Act without specifying particular limb of penalty leviable u/s 271(1)(c) of the Act, before going into merits of the case.

**6.1** The Ld. DR at the outset contended that on the basis of defective notice or otherwise not specifying particular limb of penalty in the notice u/s 247 of the Act, the penalty levied can not be held invalid or void as per judgment of the Hon'ble Delhi High Court in the case of The Commissioner Of Income ... Vs M/S Sudev Industries Limited ITA no. 805/2005 decided on 31-05-2018 {405 ITR 325(Delhi)} wherein it was held:

“In the present case, the question is whether the service affected should be treated as null and void. 35. In view of the aforesaid discussion, we find sufficient justification and reason to allow the present appeal and answer the substantial question of law in favour of the appellant-Revenue and against the respondent-assessee. It is held that the assessment proceedings under [Section 147/148](#) of the Act are not invalid or void for want of proper service of notice.”

We have given thoughtful consideration to the contention of the Ld. DR and are not impressed with such interpretation given, because the Hon'ble High Court dealt with a case “wherein the premises of the Assessee was found closed, therefore the service of notice u/s 147/148 was made to the security guard and consequently question arose as to whether service affected should be treated as null and void or not, the Hon'ble High Court held that assessment proceedings under Section 147/148 of the Act are not invalid or void for want of proper service of notice. Here the case is not of service of notice u/s 274 of the Act but it relates to validity of notice itself, hence the case referred, is not useful being factually dissimilar.

**6.2** 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 COMMISSIONER or INCOME TAX -VS- MANJUNATHA 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, and the appeal is accordingly dismissed."*

**6.3** The 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.

**6.4** 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.”*

**6.5** 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.

**6.6** In the background of the aforesaid legal position and, having regard to the manner in which the Assessing Officer has issued the notice dated 28.03.2013 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 .

**7.** In the result, the appeal filed by the Assessee is allowed.

Order pronounced in open Court on 28/07/2022.

Sd/-

**( N.K. BILLAIYA )  
ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)  
JUDICIAL MEMBER**

\*aks/-