

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.6632/M/2019
Assessment Year: 2015-16**

Dy. CIT, Circle-15(3)(2), Room No.451, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Sphynx Agro Pvt. Ltd., 522, The Great Eastern Galleria, Sector -4, Nerul West, Mumbai – 400 706 PAN: AANCS6863K
(Appellant)		(Respondent)

**CO No.32/M/2022
(Arising out of ITA No. 6632/M/2019)
Assessment Year: 2015-16**

M/s. Sphynx Agro Pvt. Ltd., 522, The Great Eastern Galleria, Sector -4, Nerul West, Mumbai – 400 706 PAN: AANCS6863K	Vs.	Dy. CIT, Circle-15(3)(2), Room No.451, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Satyaprakash Singh, A.R.
Revenue by : Shri Tejinder Pal Singh, D.R.

Date of Hearing : 14 . 07 . 2022

Date of Pronouncement : 04 . 08 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

For the sake of brevity aforesaid appeal and cross objections bearing common question of law and facts are being disposed of by way of composite order.

2. Appellant Dy. CIT, Mumbai (hereinafter referred to as the Revenue) and the cross objector M/s. Sphynx Agro Pvt. Ltd (hereinafter referred to as the assessee) by e-filing the present appeal and cross objections sought to set aside the impugned order dated 29.07.2019 passed by the Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as the Ld. CIT(A)] on the grounds inter alia that:

ITA No.6632/M/2019

“(i). On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in making deletion of penalty u/s 271(l)(c) of the I.T Act, 1961, amounting to Rs.56,54,880/-.

“(ii). The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored.

“(iii). The appellant craves leave to add, amend or alter any grounds or add new ground, which may be necessary.”

CO No.32/M/2022:

“1. The penalty order passed u/s 271(1)(c) of the Act is invalid and bad in law since the Learned A.O. has failed mention the reason for which the penalty proceedings were initiated, whether the same was on account of furnishing inaccurate particulars of income or on account of concealment of income and therefore the penalty Order be treated as non-est and quashed.

2. The Learned CIT(A) erred in not passing a speaking order in respect of Ground raised before him on account of the Validity of the penalty notice issued u/s.271(i)(c) of the Act and erred in not

considering the submissions and the judicial precedents furnished by the Appellant.

3. The Ld. CIT(A) erred in confirming the action of the Ld. A.O, without considering that the Penalty notice issued was a standard format, without application of mind, the A.O. erred in not striking out non-applicable clauses of the Section 271(i)(c) i.e. whether the penalty proceedings were initiated on account of concealment of particulars of income or on account of furnishing of inaccurate particulars of income and therefore the action of the Learned CIT(A) is against the principles of natural justice and facts of the case”

3. Briefly stated facts necessary for adjudication of the controversy at hand are : on the basis of assessment framed under section 143(3) of the Income Tax Act, 1961 (for short ‘the Act’) making addition of Rs.1,68,00,000/- on account of undervaluation of the stock, Assessing Officer (AO) initiated the penalty proceedings under section 271(1)(c) of the Act allegedly for furnishing of inaccurate particulars of income by showing undervaluation of the closing stock with respect to meat. Declining the contentions raised by the assessee, AO proceeded to levy the penalty to the tune of Rs.56,54,880/- @ 100% of tax sought to be evaded for furnishing inaccurate particular of income.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the penalty on merits by allowing the appeal. Feeling aggrieved assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. Bare perusal of the order passed by the Ld. CIT(A) goes to prove that penalty levied by the AO under section 271(1)(c) of the Act for concealment of income by way of furnishing inaccurate particulars of income has been deleted on the sole ground that the entire assessment was framed on estimated basis which does not attract the provisions contained under section 271(1)(c) of the Act. Operative part of the order is as under:

“3.3 During the appeal proceedings, the Ld. A.R. made detailed submissions and relied on various case laws vide submissions placed on record. I have perused the written submissions and also considered the arguments put forth by the Ld. A.R.

3.4 It is observed that addition has been made in the assessment proceedings on estimate basis. Penalty proceedings u/s 271(1)(c) were initiated and penalty was levied. It must be noted that the addition in the assessment proceedings was on an estimated basis and concealment of income or furnishing of inaccurate particulars has not been established by the Assessing Officer. Therefore, penalty u/s 271(1)(c) cannot be levied. In support of this proposition, reliance is placed on the decision of jurisdictional ITAT in the case of Earthmoving Equipment Service Corporation v. Dy. CIT, 22(2), Mumbai [2017] 84 taxmann.com 51 (Mumbai - Trib.) wherein, on similar set of facts, it has been held that penalty u/s 271(1)(c) cannot be levied.

3.5 Further, in the case of M/s Chempure vs. ITO (ITA No's 451, 452 & 453/M/2006), the income was estimated at 25% of alleged bogus purchases and Penalty u/s 271(1)(c) was levied on estimated addition. The ITAT, Mumbai has held that penalty u/s 271(1)(c) cannot be levied on estimated addition. The facts of the instant case are exactly identical to the facts of M/s. Chempure discussed above.”

7. We are of the considered view that when the entire addition on the basis of which penalty has been initiated under section 271(1)(c) of the Act was on the basis of estimation, provisions contained under section 271(1)(c) of the Act are not attracted and the assessee had no occasion for concealment of income or furnishing inaccurate particulars of income because he has put forth

9. Bare perusal of the notice issued u/s 274 read with section 271(1)(c) of the Act in order to initiate penalty proceedings against the assessee goes to prove that the AO himself was not aware as to whether he is issuing notice to initiate the penalty proceedings either for “concealment of particulars of income” or “furnishing of inaccurate particulars of such income” by the assessee rather issued vague and ambiguous notice by incorporating both the limbs of section 271(1)(c) of the Act. When the charge is to be framed against any person so as to move the penal provisions against him, he/she should be specifically made aware of the charges to be leveled against him/her. Identical issue has been dealt with by the Hon’ble Supreme Court in case of CIT vs. SSA’s Emerala 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 ground of unspecified notice has held as under:-

“Section 274, read with section 271(1)(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 & Ginning Factory [2013] 359 ITR 565/218 Taxman 423/35 taxmann.com 250, allowed appeal of assessee 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]”

10. We are of the considered view that when valid notice under section 274 read with section 271(1)(c) of the Act has not been issued by specifying as to under which limb of section 271(1)(c) of

the Act penalty proceedings are initiated the subsequent penalty proceedings are vitiated on account of vague, ambiguous and invalid notice issued to the assessee, hence penalty levied by the AO is not sustainable.

11. In view of what has been discussed above, appeal filed by the Revenue is hereby dismissed, however, cross objections filed by the assessee are allowed.

Order pronounced in the open court on 04.08.2022.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 04.08.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.