

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI****BEFORE NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
DR. BRR KUMAR, ACCOUNTANT MEMBER****ITA No. 6910 /DEL/2018
Asstt. Yr: 2009-10**GautamChadha
L/H Mrs. RatnaChadha
505, Salcon Aurum,
4, JasolaDistt. Centre,
New Delhi-110025
PAN- AADPC5798AVs ACIT, Circle-28(1),
New Delhi.**APPELLANT****RESPONDENT****Appellant by****ShriAshwani Kumar, Ld. CA &****Respondent by****ShriPancham Sethi, Ld. CA
Shri Ravi Kant Choudhary Ld. Sr. DR****Date of hearing****31.08.2022****Date of pronouncement****31.08.2022****ORDER****PER N.K. CHOUDHRY, JM:**

This appeal has been preferred by the Assessee against the order dated 29.08.2018, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-31, new Delhi (in short "learned Commissioner") under Section 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 the instant appeal, are that the Assessing officer vide assessment order dated 30.12.2011 though made various additions, however, initiated the penalty on the following additions:

- (i) Addition of Rs. 7,14,361/- made on account of disallowance in respect of exempt income u/s 14A of the Act;
- (ii) Addition of Rs. 69,53,155/- made on account of income accrued;
- (iii) Addition of Rs. 75,39,437/- made on account of commission receipts;
- (iv) Addition of Rs. 22,60,059/- made on account of disallowance of the income claimed as exempt; and
- (v) Addition of Rs. 4,10,895/- made u/s 37(1) of the Act on account of disallowance of payment made to persons specified u/s 40A(2b) of the Act.

2.1 On appeal, the then Ld. CIT(A) vide order dated 28-03-2013 passed in Assessee's Appeal 229/2011-12, affirmed the said additions .

3. Consequently the Assessing Officer issued various notices dated 30.12.2011; 12.3.2015 and 2.11.2016 u/s 274 of the Act and ultimately levied the penalty to the tune of Rs. 61,06,254/- @ of 100% of the tax sought to be evaded.

4. The Assessee being aggrieved by the penalty order dated 29.11.2016 passed by the Assessing Officer, preferred first appeal before the learned Commissioner, who by impugned order dismissed the appeal of the Assessee.

5. Being aggrieved with the impugned order, the Assessee has preferred the instant appeal. The Assessee by filing an application dated 31.8.2022

sought modification of the additional ground raised vide letter dated 27.7.2021. The modified additional ground raised by the Assessee reads as under:

"That the order passed under section 250(6) by the Learned Commissioner of Income Tax (Appeals) - 31, New Delhi upholding the levy of penalty under section 271(1)(c) is bad in law in as much as the notice issued by the Learned Assessing Officer under section 274 does not specify under what provision of Section 271(1)(c) the penalty is sought to be levied."

5.1 As the additional ground raised is legal in nature and based upon the facts and documents already on record and goes to the root of the case, hence we admitted the same for adjudication.

6. At the outset it was argued by the learned counsel for the Assessee that in the instant case the notices dated 30.12.2011; 12.3.2015 and 2.11.2016 issued u/s 274 read with 271(1)(c) of the Act by the AO are 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.

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. In the instant case, the AO initiated the penalty under section 271(1)(c) of the Act for 'concealing the particulars of income and furnishing inaccurate particulars of Income and thereafter issued the notices referred above u/s

274 read with 271(1)(c) of the Act without specifying any particular limb of the penalty and finally imposed the penalty for furnishing inaccurate particulars of income and concealment of income. The Assessee by way of raising additional ground which is legal in nature, challenged the Imposition of penalty mainly on the basis of notices itself, therefore we deem it appropriate to decide the legal issue involved in the instant case first, before dwelling into the 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 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, the appeal is accordingly dismissed."*

8.2 The Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar) observed 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 notices referred above under section 274 r.w.s. 271(1)(c) of the Act without specifying the limb under which the penalty proceeding has been initiated and proceeded with, apparently goes to prove that notices in this case have been issued in a stereotyped manner without applying mind which are bad in law, hence can not be considered valid notices 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 Courts including the Hon'ble Apex Court and hence, we have no hesitation to delete the penalty under consideration, levied by the AO and affirmed by the Ld. Commissioner .

8.6. As we have decided the legal issue in favour of the Assessee and deleted the penalty, therefore not dwelling into the merits of the case as the same would become academic exercise only.

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

Order pronounced in open Court on 31/08/2022.

Sd/-

**(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

Sd/-

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

MP