

**IN THE INCOME TAX APPELLATE TRIBUNAL GUWAHATI BENCH,
 (VIRTUAL HEARING AT KOLKATA)**

**[BEFORE DR. MANISH BORAD, ACCOUNTANT MEMBER &
 SHRI SONJOY SARMA, JUDICIAL MEMBER]**

ITA No. 112/GTY/2020
 Assessment Year: 2011-12

Shri Medi Ram Dodum S/o. Arung Dodum, H. No. 26, D Sector, Papum Pare, Itanagar, Arunachal Pradesh – 791111. (PAN: APRPD 4130 Q)	Vs.	ITO, Ward-1, Tinsukia
Appellant		Respondent

Date of Hearing	19.10.2022
Date of Pronouncement	08.12.2022
For the Appellant	Shri S.P. Bhati, FCA
For the Respondent	Shri Amit Kumar Pandey, JCIT

ORDER

PER SONJOY SARMA, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax(Appeals), Dibrugarh (hereinafter referred to as the Ld. CIT(A)”) dated 24.02.2020 for the AY 2016-17 whereby the Ld. Commissioner has statistically allowed the appeal of the assessee. The Ld. CIT(A) has directed the assessee to furnish a copy of the relevant notice before the AO and he would examine the notice and would delete the penalty in case the contentions of the appellant as well as the notice is in consonance with adjudication made by the A.O.

2. Dissatisfied with the above order, the assessee preferred an appeal raising following grounds of appeal.

“i. For that the Ld. CIT(A) ought to have held that penalty order itself is not sustainable as penalty itself has been levied on both the limbs and ground of

appeal taken before him was not as regards to penalty order and not penalty notice.

ii. For that the ld. AO is not justified in levying penalty u/s 271(1)(c) of I.T. Act, 1961 without establishing concealment by positive materials or record.

iii. The appellant craves the leave to take additional grounds at the time of hearing of appeal.”

3. At the time of hearing, the ld. Counsel for the assessee submitted that in the instant case notice issued u/s 271(1)(c) dated 12.06.2019 of the Act by the A.O. is vague having not mentioned any limb of the penalty is not leviable. The assessee in support of its contention also relied upon various judgement of the Hon'ble Apex Court and High Courts. For the sake of brevity, we are referring few:

“i. CIT vs SSA'S Emerald Meadows (2016) 242 Taxman 180 (SC);

ii. Principal CIT vs Goa Coastal Resorts and Recreation (P) Ltd. (2021) 130 Taxmann.com 379 (SC).”

4. On the contrary, the ld. DR supported the orders passed by the authorities below and submitted that the order under challenge does not suffer from any perversity or legality hence needs no interference.

5. We have 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 ld. AO initiated penalty proceedings u/s 271(1)(c) of the Act for concealing/furnishing of particulars of income and therefore issued notice u/s 271(1)(c) of the Act without specifying the limb of the penalty and finally imposed by the penalty for concealment of inaccurate particulars of income. However, the assessee has challenged the imposition of penalty mainly on the basis of notice itself, therefore, we deem it proper to decide the legal issue involved in the instant case, instead of going into merits of the case.

5. 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 inspite 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?

7. 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. "

6. 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 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.

7. 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' 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. So far as the imposition of 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.

9. In the background of the aforesaid legal position and the contention of AR is that in the instant case, the Assessing Officer has issued notice dated 12.06.2019 under section 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 cannot be considered a valid notice sufficient to impose penalty u/s 271(1)(c) of the Act and therefore under these circumstances, the penalty is not leviable. However, on the perusal of record, it shows that assessee did not furnish the copy of the alleged notice dated 12.06.2019 before us

and same was not furnished even before the ld. CIT(A) to examine the contention of the assessee. Therefore, interest of justice, we sent back the matter to the ld. AO to examine the alleged fact as stated by the assessee. While doing so, the ld. AO examine the relevant notice as referred by the assessee and would delete the penalty in case contention of the assessee is correct and same is in consonance with the adjudication made and if it is not correct that event, the penalty would continue to be remained.

10. In the result, the appeal of the assessee is allowed for statistical purpose.

Order is pronounced in the open court on 08.12.2022

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Sonjoy Sarma)
Judicial Member

Dated: 08.12.2022

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant– Shri Medi Ram Dodum.
2. Respondent – ITO, Ward-1, Tinsukia.
3. CIT(A),
4. CIT ,
5. DR, ITAT,

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata