

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

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

**ITA No. 2523/Del/2019
Assessment Year: 2011-12**

K. World Developers Pvt. Ltd., B-2/2, K World, Plot No.2, Karol Bagh, Ashok Nagar, New Delhi. PAN: AADCK8693B (Appellant)	Versus	ACIT, Central Circle-8, New Delhi. (Respondent)
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Appellant by : Ms. Sanjana Sachdev, Ld. Adv.
Respondent by : Mr. Mohd. Gayasuddin Ansari, Ld. CIT/DR

Date of hearing: 21.02.2023
Date of order : 23.02.2023

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 21.01.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-24, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2011-12.

2. As per assessment order, the AO on noticing *that the Assessee received the share capital of Rs.35,00,000/- from Ankay Associates Pvt. Ltd., a company found to be controlled and managed by one Shri Anil Agarwal who had admitted in his statement that the company M/s. Ankay Associates Pvt. Ltd. does not undertake any business activity except providing the accommodation entries* , made the addition of Rs.35,00,000/- on account of bogus share capital by passing assessment order dated 30.03.2015 u/s. 153A/143(3) of the Act.

On the basis of said addition Rs.35,00,000/-, the Assessing Officer recorded his satisfaction for initiation of penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income. Accordingly, after relying upon various decisions, the Assessing Officer imposed a penalty of Rs.10,81,500/- @ 100% of the tax sought to be evaded vide penalty order dated 20.03.2018 for furnishing inaccurate particulars of income.

3. The Assessee, being aggrieved, preferred first appeal before the Id. Commissioner, who vide impugned order affirmed the penalty order on the premise that the Assessee had not been able to prove the genuineness of share capital of Rs.35,00,000/- either during the assessment proceedings or appellate proceedings and even in the course of penalty proceedings. Being aggrieved by the impugned order, the Assessee is in appeal before us.

4. Heard the parties and perused the material available on record. The Id. Counsel, Ms. Sanjana Sachdev, Ld. Advocate at the outset

claimed that in the assessment order, the satisfaction was recorded for initiation of penalty proceedings for furnishing of inaccurate particulars of income. However, the Assessing Officer in the penalty proceedings, issued the notice u/s. 274/271(1)(c) of the Act, for concealment of particulars of income/for furnishing inaccurate particulars of income. In fact, the Assessing Officer in the notice u/s. 274 of the Act without specifying particular limb of penalty, has used slash (/) between both the limbs of penalty and in the penalty proceedings ultimately levied the penalty for furnishing of inaccurate particulars of income.

4.1 On the contrary, Mr. Mohd. Gaysuddin Ansari, Ld. CIT/DR, by inviting para No. 5 of the penalty order emphasised that the Assessee by filing its reply to the notice u/s. 274/271(1)(c) of the Act has acknowledged the initiation of penalty proceedings for furnishing of inaccurate particulars of income, therefore, the penalty levied by the Assessing Officer and affirmed by the Id. Commissioner does not require any interference on this score.

5. We have given thoughtful consideration to the peculiar facts and circumstances of the case. The Assessee in the instant case has challenged the imposition of penalty mainly on the basis of notice itself, therefore we deem it appropriate first to decide the legal issue, 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.

5.1 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 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?

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."*

5.2. 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.

5.3. 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(l)(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.”

5.4 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.

5.5 Though as per our wisdom, the contention of Mr. Mohd. Gayasuddin Ansari, Ld. CIT/DR, to the effects that the Assessee by filing its reply to the notice u/s. 274/271(1)(c) of the Act, has acknowledged the initiation of penalty proceedings for furnishing of inaccurate particulars of income, therefore, the penalty levied by the Assessing Officer and affirmed by the Id. Commissioner does not require any interference on this score, seems to be logical, however in

the background of the aforesaid legal position and, having regard to the manner in which the Assessing Officer has issued the notice dated 17.02.2018 under section 274 r.w.s. 271(1)(c) of the Act without specifying the particular 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 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.

5.6 We clarify, *as Ms. Sanjana Sachdev, Ld. Advocate fairly submitted that quantum appeal against the addition on the basis of which the penalty under consideration has been levied, is still pending for adjudication*, this order shall not be taken as embargo to initiate the penalty proceedings afresh in accordance with law, if necessitates, in case the addition is to be made afresh as per facts and circumstances, which may arise in future.

5.7 As by adjudicating the legal issue, we have deleted the penalty and therefore are not inclined to adjudicate other issue which pertains to merit of the case, as adjudication of the same would prove futile exercise.

6. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 23/02/2023.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant Registrar
ITAT New Delhi

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