

IN THE INCOME TAX APPELLATE TRIBUNAL

BENCH "DB" JABALPUR

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)**

**ITA Nos. 187 & 188/JAB/2016
Assessment Years: 2002-03 & 2003-04**

J.P. Tobacco Products Pvt. Ltd.,
Pathariya Phatak, Damoh (M.P.)

ACIT Circle-Sagar.

Vs.

**PAN No. AAACJ 7141 G
Appellant**

Respondent

Assessee by : Mr. G.N. Purohit, Sr. Advocate &
Mr. Abhijeet Shrivastava, Advocate
Revenue by : Mr. Saad Kidwai, CIT-DR

Date of Hearing : 22/09/2023
Date of pronouncement : 20/10/2023

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against two separate orders dated 21.03.2016 and 16.03.2016 passed by the Ld. Commissioner of Income-tax (Appeals)-1, Jabalpur [in short 'the Ld. CIT(A)'] for assessment year 2002-03 and 2003-04 respectively in relation to penalty levied by the Assessing Officer u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). In the grounds raised in both the assessment years, the assessee has challenged levy of



the penalty by the Assessing Officer. The assessee also raised additional ground in both these appeals that charges for levy of the penalty are not specific in the notices issued and therefore, the penalty levied by the Assessing Officer is liable to be quashed.

2. We have heard rivals submission of the parties and perused the relevant material on record. In support of additional ground, the Ld. Counsel of the assessee has filed a copy of the notices issued u/s 271(1)(c) of the Act r.w.s. 274 of the Act dated 30.12.2008 in both the appeals. On perusal of those notices, we find that the Assessing Officer has non-stricken of relevant charges and has not specified whether the penalty was initiated for concealment of income or furnishing inaccurate particulars of income. We find that the Hon'ble Karnataka High Court in the case of **Manjunatha Cotton and Ginning Factory (Karnataka High Court)(2013) CTR 153 (Kar)** has deleted the penalty in view of non-striking of relevant limb for levy of the penalty in the notice issued u/s 274 of the Act. The Hon'ble High Court held that show cause notice u/s 274 was defective as it does not spelled out the ground on which penalty is sought to be imposed and consequently penalty was cancelled. The Hon'ble Madhya Pradesh High Court ,Indore Bench in the case of **Pr. CIT v. Kulwant Singh Bhatia (2018) 304 CTR (MP) 103**, following the decision of the Hon'ble Karnataka High Court in the case of Manjunatha Cotton Ginning Factory (supra) held that notice should be specific to the charges. The relevant finding of the



Hon'ble Madhya Pradesh High Court (supra) is reproduced as under:

“11. On due consideration of the arguments of the learned counsel for the appellant, so also considering the fact that the ground mentioned in show-cause notice would not satisfy the requirement of law, as notice was not specific, we are of the view that the learned Tribunal has rightly relying on the decision of CIT V/s. Manjunatha Cotton Ginning Factory (supra) and CIT V/s. SSA'S Emerald Meadows (supra) rightly allowed the appeal of the assessee and set aside the order of penalty imposed by the authorities. No substantial question of law is arising in these appeals. ITA.No(s).9/2018, 10/2018, 11/2018, 12/2018, 13/2018 and 14/2018, filed by the appellant have no merit and are hereby dismissed.”

2.1 Since in the instant case, the Assessing Officer has not stricken out the relevant limb for levy of the penalty and therefore notice being defective, respectfully following the finding of the Hon'ble Jurisdictional High Court, the order of the Ld. CIT(A) on the issue in dispute is set aside and the penalties levied by the Assessing Officer are cancelled.

3. In the result, both the appeals filed by the assessee are allowed.

Order pronounced under Rule 34(4) of the ITAT Rules, 1963 by way of result of appeal displayed on the Notice Board at ITAT Office, Jabalpur on 20/10/2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 20/10/2023
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai



		Date	Initials	
	Original dictation pad is enclosed at the end of file			
1.	Draft dictated on:	12.10.2023		Sr. PS/PS
2.	Draft placed before author:	12.10.2023		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	File sent to the Bench Clerk:			
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			
10.	Date of Dispatch of order			