

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND SHRI
CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

ITA No.2971/Del/2022
Assessment Year: 2013-14

M/s. APL Apollo Tubes Ltd., 37, Hargovind Enclave, New Delhi-1100 92	Vs.	ACIT, Central Circle-3(1), New Delhi
PAN :AAACB0960D		
(Appellant)		(Respondent)

Department by	Shri Kanv Bali, Sr. DR
Assessee by	Dr. Rakesh Gupta & Shri Somil Agarwal, Advs.

Date of hearing	16.11.2023
Date of pronouncement	14.02.2024

ORDER

PER CHALLA NAGENDRA PRASAD: JUDICIAL MEMBER:

This appeal is filed by the assessee against the order of the learned Commissioner of Income-Tax (Appeals)/National Faceless Appeal Centre (NFAC) dated 06.12.2022 for the assessment year 2013-14 in sustaining the penalty levied under Section 271(1)(c) of the Income-Tax Act,1961.

2. The learned counsel for the assessee at the outset submits that the initiation of penalty proceedings under Section 271(1)(c) is bad in law for the reason that in the notice issued under Section 274 read with section 271(1)(c), the relevant limb of the charge was not specified i.e. whether the penalty is initiated for furnishing of inaccurate particulars or for concealment of income and, therefore, the penalty order is bad in law. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of CIT vs. SSA'S Imerald Meadows – 242 Taxman 180. Reliance was also placed on the decision of Co-ordinate Bench of the Tribunal in the case of Meherjee Cassinath Holdings Pvt. Ltd. vs. ACIT in ITA No.2555/Mum/2012 dated 28.04.2017.

3. The learned counsel for the assessee further submits that after granting relief by the learned CIT (Appeals), the income was assessed under MAT. The learned counsel placing reliance on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Nalwa Sons Investments Ltd. – 327 ITR ITR 543 submits that when the income computed in accordance with the normal provisions of the Act is less than the income determined under book profits and the income of the

assessee is assessed under Section 115 JA/JB and not under normal provisions of the Act, no penalty can be imposed under Section 271(1)(c) of the Act.

4. Heard rival submissions and perused the orders of the authorities below. On perusal of the notice issued under Section 274 read with section 271(1)(c) of the Act, we observe that the Assessing Officer did not specify the limb for which the notice was issued. In other words, the Assessing Officer has not specified whether the penalty notice was issued for concealment of income or for furnishing inaccurate particulars of such income. Identical issue has been decided by the Hon'ble Karnataka High Court in the case of CIT vs. SSA'S Emerald Meadow – 73 taxman.com 248 by observing as under:

“2. This appeal has been filed raising the following substantial question 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 despite the amendment of Section 271(1B) 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 on the decision of the Division Bench of this Court rendered in the case of CIT vs. Manjunatha Cotton & Ginning Factory [2013] 359 Income Tax Return 565/218 Taxmann 423/35 taxmann.com 250 (Kar.).
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 allowed."
5. We observe that the decision of the Hon'ble Karnataka High Court has been challenged before the Hon'ble Supreme Court by the Revenue and the Hon'ble Supreme Court dismissed the SLP filed by

the Revenue holding that there was no substantial question of law in the case of CIT vs. SSA'S Emerald Meadow reported in 242 Taxmann.com 180. Respectfully, following the said decision, we delete the penalty levied under Section 271(1)(c) of the Act.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 14/02/2024.

Sd/-

**(G.S. PANNU)
VICE-PRESIDENT**

Sd/-

**(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

Dated: 14th February, 2024.
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi