

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.19/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2015-2016)

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| Biswajit Nayak, Qtr.No.B-174, Sector-1, Rourkela-769008 | Vs | ACIT, Rourkela Circle, Rourkela |
| PAN No. :AAQPN 2087 A | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| निर्धारिती की ओर से /Assessee by | : | Shri S.K.Sarangi, CA |
| राजस्व की ओर से /Revenue by | : | Shri S.C.Mohanty, Sr. DR |
| सुनवाई की तारीख / Date of Hearing | : | 15/05/2024 |
| घोषणा की तारीख/Date of Pronouncement | : | 15/05/2024 |

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 28.09.2022, in DIN & Order No.ITBA/NFAC/S/250/2022-23/1046057335(1) for the assessment year 2015-2016, confirming the penalty levied u/s.271(1)(c) of the Act of Rs.14,21,784/-.

2. The appeal is delayed by 414 days. In this regard, the assessee has filed a condonation petition along with affidavit stating therein reasonable cause for condonation of delay. Ld. Sr DR did not raise any serious objection. Looking to the facts of the case and the prayer of the assessee, we condone the delay of 414 days in filing the present appeal and the appeal of the assessee is disposed of on merits.

3. Before us, the assessee has taken three grounds of appeal, which are related to the confirmation of the imposition of penalty of Rs.14,21,784/- u/s.271(1)(c) of the Act. Since all the ground pertain to levy of penalty u/s.271(1)(c) of the Act, the same are clubbed together for the sake of convenience.

4. Brief facts of the case are that the assessment order in this case was passed u/s.143(3) of the Act dated 29.12.2017, wherein the total additions of Rs.1,73,50,918/- were made on following issues :-

- i) introduction of capital of Rs.39,05,101/-;
- ii) cash deposit in bank account of Rs.1,28,90,120/- and
- iii) disallowance of interest on certain depreciation of Rs.5,55,697/-

5. In the first appeal, the Id. CIT(A) has deleted the addition made on account of bank deposits and reduced the adhoc disallowance to 50%, however, confirmed the addition on account of introduction of capital. Further the AO imposed the penalty u/s.271(1)(c) of the Act at Rs.14,21,784/- vide orders dated 12.01.2022 by holding that the assessee has furnished inaccurate particulars of income to the extent of Rs.41,82,949/- i.e. the addition upheld in appellate proceedings. Against this order, the assessee filed the appeal before the Id. CIT(A), who sustained the penalty, thus, the assessee preferred appeal before the ITAT.

6. Before us, the Id. AR of the assessee submitted that in the assessment order additions were made on three grounds and if the assessment order is seen, it appears that penalty u/s.271(1)(c) of the Act was initiated for furnishing inaccurate particulars in respect of addition

made on account of deposit in bank account and no penalty was initiated on the other two issues. Since the additions on account of cash deposit in the bank account stood deleted by the Id. CIT(A), there remained no issue on which penalty u/s.271(1)(c) of the Act could be levied and therefore, no penalty is leviable in the hands of the assessee in the present case.

7. Ld. AR further submitted that the AO has issued a show cause notice u/s.274 r.w.s.271(1)(c) of the Act dated 25.01.2021, wherein the assessee was show caused to explain as to why not the penalty be levied for “concealed the particulars of income”. He, thus, submitted that before initiation of the penalty proceedings, in the assessment order satisfaction was recorded for furnishing inaccurate particulars of income whereas the show cause notice is issued for concealment of particulars of income. The extract of show cause notice dated 25.01.2021 is reproduced as follows :-

Annexure-1 - 1 -



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT
COMMISSIONER OF INCOME TAX
ACIT,CIRCLE ROURKELA

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| To, BISWAJIT NAYAK QR NO B 174 SECTOR 1, ROURKELA 769008, Orissa India | | |
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|--------------------|-----------------------------|---|----------------------|
| PAN: AAQPN2087A | Assessment Year: 2015-16 | DIN & Notice No.: ITBA/PNL/S/271(1)(c)/2020- 21/1030086767(1) | Date : 25/01/2021 |
|--------------------|-----------------------------|---|----------------------|

Notice under section 274 read with section 271(1)(c) of the Income Tax Act, 1961

Sir/ Madam,

Whereas in the course of the proceedings before me for the Assessment Year 2015-16, it appears to me that **you have concealed the particulars of income.**

You are hereby requested to appear before me either personally or through a duly authorised representative at 01:00 PM on 01/02/2021 and show cause why an order imposing a penalty on you should not be made under section 271(1)(c) of the Income Tax Act, 1961.

If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 271(1)(c) of the Income Tax Act, 1961.

LAZARUS JOJO
ACIT,CIRCLE ROURKELA

Note: If digitally signed, the date of digital signature may be taken as date of document.
 AAYAKAR BHAWAN, Rourkela Range, UDIT Nagar, ROURKELA, Orissa, 769012
 Email: ROURKELA.DCIT@INCOMETAX.GOV.IN

* DIN-Documents identification No.

8. He further requested that the penalty levied is on different charge whereas in the notice assessee was show caused on different limb, therefore, no penalty is leviable in this case. For this, he placed reliance on the judgment of Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton & Ginning Factory, reported in [2013] 35 taxmann.com 250 (Karnataka).

9. *Per Contra*, the Id. Sr. DR has relied upon the order of the lower authorities and submitted that the satisfaction was recorded for furnishing inaccurate particulars of income and finally penalty was also levied for furnishing of inaccurate particulars of income, therefore, the AO has rightly levied the penalty. With regard to the defect in the notice, he placed reliance on the decision of Hon'ble Madras High Court in the case of Sundaram Finance, reported in 403 ITR 407 (Madras HC) and supported the order of the lower authorities and requested for confirmation of the penalty so levied.

10. We have heard rival submissions. It is seen that the AO at the time of recording the satisfaction in the assessment order has initiated the penalty proceedings u/s.271(1)(c) of the Act for furnishing inaccurate particulars of income with respect to the addition made under the title "cash deposit in personal bank account" vide para 4.0 of the assessment order. It is further seen that he has discussed the addition made in regard to the "introduction of capital" in para 3.0 and "disallowance of interest on car loan and depreciation" in para 5.0 where no satisfaction was recorded with regard to the initiation of penalty proceedings u/s.271(1)(c) of the Act.

Thus, it clearly evident from the assessment order that the AO was very much clear in his mind that the penalty proceedings u/s.271(1)(c) of the Act were initiated only for furnishing inaccurate particulars of income for the additions made towards cash deposit in the bank account which has already been deleted by the Id. CIT(A). Thus, the very satisfaction of initiation of penalty proceeding u/s.271(1)(c) of the Act on account of inaccurate particulars of income has no legs to stand. Once the addition on which the penalty proceedings were initiated, is deleted, no penalty could be levied. Accordingly, we are in agreement with the contention of the Id. AR that the penalty levied u/s.271(1)(c) of the Act and confirmed by the lower authorities on other issues on which no satisfaction was recorded in the assessment order, is invalid and without jurisdiction, therefore, the penalty is not leviable.

11. It is further seen that the notice dated 25.01.2021 was in respect to the initiation of proceedings u/s.271(1)(c) of the Act for concealment of the particulars of income and the penalty was levied for furnishing inaccurate particulars of income. The Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factor (supra) has held that notice for initiating the penalty should clearly spelt out the limb on which the penalty is going to be levied and further held that taking up penalty proceedings on one limb and findings of proceedings giving on another limb is bad in law. The Hon'ble Supreme Court in the 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 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 on 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."

12. The reliance placed by the Hon'ble Sr. DR in the case of Sundaram Finance (supra) are on different facts as in that case the penalty was levied for claim of depreciation on the assets which were never existed and thus, the Hon'ble High Court was of the view that the assessee has not only furnished the inaccurate particulars but also concealed the income. The facts of this case are not applicable to the facts of the present case. In view of these facts and also by following the judgment of the Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory (supra), we are of the considered opinion that the penalty is not leviable in the present case since the show cause notice refers one limb of the provisions of Section 271(1)(c) of the Act, whereas the penalty has been levied on other limb. Besides the penalty u/s.271(1)(c) of the Act was levied on the additions sustained on which no satisfaction was recorded.

13. In view of these facts and by respectfully following the decision of Hon'ble Supreme Court in the case of M/s. SSA's Emerald Meadows (supra), we delete the penalty levied by the AO and confirmed by the Id. CIT(A) u/s.271(1)(c) of the Act.

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

Order dictated and pronounced in the open court on 15/05/2024.

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)

लेखा सदस्य/ ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 15/05/2024

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Biswajit Nayak,
Qtr.No.B-174, Sector-1,
Rourkela-769008
2. प्रत्यर्थी / The Respondent-
ACIT, Rourkela Circle, Rourkela
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack