

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.1374/Bang/2024
Assessment year : 2011-12

The Deputy Commissioner of Income Tax, Central Circle 1(1), Bengaluru.	Vs.	Smt. Vankadara Padmavathi, Prop. Ms. Mineral Embassy, Flat No.7, Ashwasthi Apartment, Vivekananda Nagar, Hospet – 583 201. <b>PAN: APFPP 2962J</b>
APPELLANT		RESPONDENT

CO No.37/Bang/2024 [in ITA No.1374/Bang/2024]
Assessment year : 2011-12

Smt. Vankadara Padmavathi, Prop. Ms. Mineral Embassy, Hospet – 583 201. <b>PAN: APFPP 2962J</b>	Vs.	The Deputy Commissioner of Income Tax, Central Circle 1(1), Bengaluru.
CROSS OBJECTOR		RESPONDENT

Revenue by	:	Shri Sridhar E., CIT(DR)(ITAT), Bengaluru.
Assessee by	:	Shri T. Srinivasa Rao, CA

Date of hearing	:	14.10.2024
Date of Pronouncement	:	23.10.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

The appeal is filed by the revenue and cross objection filed by the assessee against the order dated 31.5.2024 of the CIT(Appeals)-11, Bangalore, for the AY 2011-12.

2. The Revenue has raised the following grounds:-

“1. Whether on the facts & circumstances of the case, the Id. CIT(A) was right in holding the initiation of penalty proceedings as defective and penalty order as bad in law in the absence of clear limb of section 271(1)(c) of the Act under which penalty proceedings are initiated without considering the fact that the assessee didn't raise this issue earlier during penalty proceedings?

2. Whether on the facts & circumstances of the case, the Id. CIT(A) was right in holding that initiation of penalty proceedings is defective and passing of the penalty order is bad in law in the absence of clear limb of section 271(1)(c) of the Act under which penalty proceedings are initiated even though it had caused no prejudice to the assessee and the assessee clearly understood what was the purport and import of notice issued under section 274 r/w section 271 of the Act?

3. Whether on the facts & circumstances of the case, the Id. CIT(A) was right in holding the initiation of penalty proceedings as defective without considering the facts of the case where the Assessing officer in the penalty order has clearly established that the assessee has furnished inaccurate particulars of income?”

3. Briefly stated the facts of the case are that the assessee filed return of income on 31.10.2012 declaring total income of Rs.1,71,350. The assessee declared business loss of Rs.68,47,444. The assessee was issued statutory notices. The assessee is proprietor of M/s. Mineral Embassy, which is engaged in procurement and export of iron ore.

The business activity commenced during the FY 2010-11 relevant to AY 2011-12. During the course of assessment proceedings, it was found that the assessee gave advances to Associated Mining Corporation of Rs.10,32,39,139 towards supply of iron ore and transportation and to BST (HK) Ltd. of Rs.2,73,36,715 being amount not receivable from the party due to dispute, was written off as bad debt. The details of the transactions were called for and the reply submitted by the assessee was not accepted. Assessment was completed u/s. 143(3) r.w.s. 153C of the Act by order dated 12.3.2013 involving a disallowance of Rs.10,32,39,139 relating to claim of bad debt written off by the appellant.

4. The assessee filed appeal before the CIT(Appeals) and the ITAT which was dismissed. Further the appeal filed appeal before the jurisdictional High Court u/s. 260A of the Act which is pending.

5. The AO initiated penalty proceedings and passed penalty order u/s. 271(1)(c) r.w.s. 274 of the Act observing that the assessee has filed inaccurate particulars of income and imposed penalty of Rs.3,30,00,000. On appeal, the Id. CIT(Appeals) after considering the grounds of the assessee and submissions of the assessee, allowed the appeal of the assessee following various judgments including the judgment of jurisdictional High Court in the case of CIT v. Manjunatha Cotton Ginning Mills (2013) 35 taxmann.com 250 / 359 ITR 565 (Kar). He also relied on the judgment of Pr.CIT v. Deccan Mining Syndicate P. Ltd. [2019] 104 taxmann.com 29 / 262 Taxman

305 and CIT v. SSA's Emerald Meadows [2016] 242 Taxman 180 (SC). Aggrieved, the revenue is in appeal before the Tribunal.

6. The Id. DR relied on the penalty order dated 21.1.2019 passed by DCIT, Central Circle 1(1), Bangalore and strongly submitted that it is not mandatory to record satisfaction by eh AO while passing the order as well as while issuing notice. It depends upon the facts and circumstances. The penalty may be on both limbs, either for filing inaccurate particulars of income or concealment of income. The AO while framing the assessment noted that both the limbs may be applied and while issuing notice the same thing was incorporated. In the penalty order it is clearly mentioned that penalty was imposed for filing inaccurate particulars of income. In support of his argument, he relied on the judgment of Hon'ble Apex Court in the case of MAK Data P. Ltd. (2013) [para 4], UOI v. Dharmendra Textiles Ltd. (2008) 13 SCC 369 and CIT v. Atul Mohan Bindal (2009) 9 SCC 589. The Id. DR further submitted that during the course of assessment proceedings, the assessee was unable to substantiate its case that with sufficient documents that it is allowable u/s. 36.

7. The Id. AR strongly relied on the order of the CIT(Appeals) and submitted that while issuing notice u/s. 271(1)(c) r.w.s. 274, the AO has not pointed out under which limb penalty is imposed. While initiating penalty proceedings the AO must satisfy under which limb of section 271(1)(c) penalty is leviable which is mandatory. He submitted

that the Id. CIT(Appeals) has considered the issue and is justified in his order. He also relied on the following judgments:-

INDEX OF THE DECISIONS RELIED UPON		
Sl No	Particulars	Page No.
1	Copy of ITAT (BNG) order in the case of Rahil MaheshKumar Nizamuddin Vs ACIT - International Taxation	93-116
2	Copy of ITAT KOL order in the case Echo Entertainment Pvt. Ltd Vs Income Tax Officer Ward-1(4), ITA No 1469/KOL/2023 dated as on 26.09.2024	117-120
3	Copy of the order of Hon'ble HC-KAR in the case of CIT Vs Manjunatha Cotton and Ginning Factory ,	121-138
4	Copy of the order of Hon'ble HC-KAR in the case of The Income Tax Officer Vs M/S SSA'S Emerald Meadows	139-142
5	Copy of the Order of Hon'ble SC , dismissing the SLP filed by Revenue against the of order in SSA'S Emerald Meadows	143-144
6	Copy of the order of Hon'ble SC in the case of CIT Vs Reliance Petroproducts Pvt. Ltd	145-150
7	Copy of the order of ITAT BNG in the case of M Narayanaswamy Vs ITO	151-154
8	Copy of The Deputy Commissioner of Income tax -14 (1) (1) , Mumbai versus M/s. Michael page International Recruitment Pvt. ltd. and (vice-versa)- ITAT Mumbai	155-162
9	Copy of the M/s. Shree Swaminarayan Enterprises Versus ITO Ward 2 (4), - ITAT Mumbai	163-166
10	Copy of the Shri. Mahendra B Chowhan Vs The ASCIT , Circle 1(2), -ITAT Bengaluru	167-182

8. Considering the rival submissions, we note that assessment was completed u/s. 143(3) r.w.s. 153C of the Act. The AO noted that advances of Rs.10.32 crores given to Associated Mining Corporation for supply of iron ore and transportation and the submissions made by the assessee were not accepted by the AO and it was added to the income of the assessee. The AO has initiated penalty proceedings separately for concealment of income/furnishing inaccurate particulars of income. While issuing show cause notice u/s. 271(1)(c) r.w.s. 274 of the Act, there was no specific observation of the AO under which limb penalty is to be levied which is clear from the order of the CIT(Appeals) at para 5.3.1. We find substance in the argument of the

Id. AR of the assessee that this issue has been settled by the jurisdictional High Court in the case of Manjunatha Cotton Ginning Mills noted supra and is squarely applicable in the present facts of the case. The CIT(Appeals) has discussed the issue in detail and has also relied on various other judgments in his order which is reproduced below:-

“5.5.1 in the instant case it is noted that AO has not expressly stated whether penalty proceedings have been initiated on account of concealment of income or furnishing of inaccurate particulars with regard to the addition of Rs. 10,32,39,139/-. It is not the case of the AO that penalty is leviable under both the limbs, since the law does not envisage the same. In following cases it was held that levy of penalty under both the limbs is not permitted under the law.

- CIT vs. Samson Perinchery ITA No. 1154 of 2014 dtd. 5-1-2017 (Bom.HC)
- Jehangir HC Jehangir vs. ACIT ITA No. 1261/M2011, A.Y. 2006.07 dt. 17-5-2017 (Mum.) (Trib.)

5.5.2 Various courts of law have affirmed the view that levy of penalty has to be clear as to the limb for which it is to be levied, and when the position is unclear, penalty is not sustainable. It will be worthwhile to refer to relevant extract of the decision of Hon'ble HC in the case of CIT Vs Manjunatha Cotton & Ginning mills (supra), reproduced below;

*“59. As the provision stands, the penalty proceedings can be initiated on various ground set out therein. If the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on*

*deeming provision contained in Explanation 1 or in Explanation 1(B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty on him as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in Section 271(l)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under Section 274 should satisfy the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended if the show cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.*

*60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(l)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty*

*proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.*

*61. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are different. Thus the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The Apex Court in the case of T. Ashok Pai v. CIT [2007] 292 ITR 11/161 Taxman 340 at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of CIT v. Manu Engg. [1980] 122 ITR 306 and the Delhi High Court in the case of CIT v. Virgo Marketing (P.) Ltd. [2008] 171 Taxman 156, has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind.”*

5.5.3 As per the ratio of the decision of the Hon'ble HC in the case of Manjunatha Cotton (supra) the need to mention the charge in the notice is necessitated when the charge is not discernible from the assessment. If the charge is discernible from the assessment order, it is immaterial whether the notice issued

u/s 274 fails to mention the correct charge. However, in the instant case as discussed in the preceding paragraphs, in the assessment order as well as the issue of show cause notice on 28.8.2018, after the order of Hon'ble ITAT was passed, the AO is not sure as to the limb of Section 271(1)(c) under which penalty is proposed to be levied.

5.5.4 If the AO had discussed in the assessment order, the limb under which the penalty proceedings have been initiated, the omission to mention the same in the notice u/s 274, could have been covered by taking recourse to Section 292B, however such fact pattern is not present in the case at hand. Further ITAT in the case of Shri Mahendra B. Chowhan [TS-542-ITAT-2020(Bang)], held that defective notice issued for penalty levy u/s.271(1)(c) and 271AAB is not curable u/s 292BB, deletes penalty levied in case of assessee-individual; Notes that in notice u/s.271(1)(c) issued for AYs 2009-10 to AY 2014-15 and notice u/s.271AAB for AY 2015-16, the AO had failed to mention the specific charge i.e. concealment or inaccurate furnishing of particulars; Relies on Karnataka HC decision in case of Manjunatha Cotton and Ginning Factory, holds that imposition of penalty cannot be sustained; Rejects CIT(A)'s stand that such defective notice is curable u/s.292B, states that non-mentioning of the charge against the assessee in the show cause notice cannot be considered as a mistake, omission or defect.

5.5.5 In the case of CIT v. SSA's Emerald Meadows [2016] 73 taxmann.com 241 (Karr.), relying on decision of Division Bench of Karnataka High Court rendered in case of CIT v. Manjunatha Cotton & Ginning Factory 120131359 ITR 565/218 Taxman 423/35 taxmann.com 250, the Hon'ble HC held that notice issued by Assessing Officer under section 274 read with section 271(1)(c) was bad in law, as it did not specify under which limb of section 271(1)(c) penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate Particulars of income, and, therefore, there was no substantial question of law arising for determination. The Supreme Court held that there was no merit in SLP filed by Revenue, and the same was liable to be dismissed, CIT v. SSA's Emerald Meadows [2016] 73 taxmann.com 248/242 Taxman 180 (SC).

5.5.6 The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment and furnishing inaccurate particulars of income are different. Thus, the Assessing Officer while issuing notice has to come to the conclusion that whether it is a case of concealment of income or is it a case of furnishing of inaccurate particulars. The Apex Court in the case of T. Ashok Pai v. CIT (2007) 292 ITR 11/161 Taxman 340 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of CIT v. Manu Engg. [1980] 122 ITR 306 and the Delhi High Court in the case of CIT v. Virgo Marketing (P.) Ltd. [2008] 171 Taxman 156 has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind as per the decision of Hon'ble HC in the case of Manjunatha Cotton & Ginning Factory's (supra).

5.5.7 In the case of CIT v. Whiteford India Ltd. (2013)138 taxmann.com 15/219 Taxman 98 (Gui.) (Mag.). it was held that,

*"In absence of clear finding of Assessing Officer whether assessee is guilty of concealment of income or furnishing incorrect particulars of income. penalty levied w-der section 271(1)(c) cannot be sustained".*

9. After going through the above order of the CIT(Appeals), we do not find any infirmity. Accordingly, we dismiss the appeal of the revenue.

10. Since we have dismissed the revenue's appeal, the CO filed by the assessee becomes infructuous and accordingly dismissed.

11. In the result, the appeal by the revenue and the CO by the assessee is dismissed.

Pronounced in the open court on this 23<sup>rd</sup> day of October, 2024.

Sd/-

( GEORGE GEORGE K. )  
VICE PRESIDENT

Sd/-

(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 23<sup>rd</sup> October, 2024.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.