

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**ITA Nos.887 & 888(B)/2014
(Assessment years : 2007-08 & 2008-09)**

M/s Sobha Space (P) Ltd.
Shobha Corporate Office Sarjapur,
Marathalli Outer Ring Road,
Devarabisanahalli, Belandur Post,
Bangalore-560 103

Appellant

PAN No.AAICS0419G

Vs

The Asst. Commissioner of Income-tax,
Central Circle-1(3), 3rd Floor,
Bangalore-560 001

Respondent

**Assessee by : Shri V.Chandrashekar, Advocate
Revenue by : Dr. P.K.Srihari, Addl.CIT**

Date of hearing : 15-06-2015

Date of pronouncement : 29-06-2015

ORDER

PER SHRI VIJAY PAL RAO, JM:

These two appeals by the assessee are directed against two separate orders both dated 28-02-2014 of the CIT(A)-III, Bangalore arising from the penalty orders passed u/s 271(1)(c) of the IT Act, 1961 for the assessment year 2007-08 & 2008-09 respectively.

2. The assessee has raised common grounds in these appeals. One of the grounds of the assessee is challenging the validity of notice issued

u/s 274 of the IT Act, r.w.s.271(1)(c) of the IT Act, 1961 and consequently, the validity of penalty orders passed u/s 271(1)(c) of the Act. First we will take up this issue without going into the merits of the case.

3. The learned AR of the assessee submitted that penalty proceedings initiated in the hands of the assessee are bad in law in the absence of clear recording of his allegation, by the AO that there is a case of concealment or furnishing of inaccurate particulars of income. It is contended that the AO has not mentioned in the notice issued u/s 274 as to whether the assessee has concealed the income or furnished inaccurate particulars of income. The AO has also not mentioned clearly the allegation in his notice and therefore, deprived the assessee to lead a proper defense. He has referred notice u/s 274 dated 27-12-2011 issued by the AO and submitted that the said notice is silent about what sort of income was concealed by the assessee or which inaccurate particulars of such income were furnished. Thus, the impugned penalty order is not sustainable under law as held by the Hon'ble jurisdictional High Court in the case of CIT Vs Desai & Co. in ITA No.5062 of 2010 dated 16-04-2012 and also in case of CIT Vs Manjunatha Cotton & Ginning Factory (359 ITR 565). Learned AR has further pointed out that an identical issue has been considered and decided by this Tribunal in a series of decisions wherein the Tribunal by following the judgment of the Hon'ble jurisdictional High Court in the case of CIT Vs Manjunatha Cotton & Ginning Factory (Supra) has cancelled the

penalty levied u/s 271(1) (c) of the IT Act. He has relied upon the following decisions;

1. Shri Ravindra Vs ITO in ITA No.1421 & 1422(B)/2013 dt.12-12-2014

2. M/s Mathoshree Builders Pvt.Ltd Vs DCIT in ITA No.96(B)/2013 dt.21-03-2014.

4. On the other hand, learned DR submitted that when there is no ambiguity in the assessment order as well as in the notice u/s 274 of the IT Act, 1961 than, the assessee was not deprived of any opportunity of leading defense. He has referred the assessment order and submitted that in the assessment order itself, the AO has specifically made a mention that the penalty proceedings u/s 271(1)(c) initiated. In the case of the assessee, the additional income of Rs.25.00 lakhs was declared by the assessee u/s 132(4) and after reducing the loss of Rs.1,97,072/-, the assessment was made by the AO, on the income offered by the assessee of Rs.23,02,928/-. Thus, there was no ambiguity or confusion about the concealment of income and particulars of income which were disclosed by the assessee during the search and seizure action u/s 132 of the IT Act, 1961. He has relied upon the orders of the authorities below.

5. We have considered the rival submission as well as the material on record. We note that the notices dated 27-12-2011 issued in respect of both the assessment years under consideration are silent in respect of nature and a specific particulars of income which has been concealed by

the assessee or particulars of income which are allegedly furnished inaccurately by the assessee. The said notice issued by the AO is a stereotype proforma notice without giving any details of the alleged concealment of particulars of income or furnishing inaccurate particulars of such income. Therefore, insofar as the fact of non-mentioning of any specific allegation in the notice u/s 274 of the Act is not in dispute. Accordingly, the case of the assessee is covered by the judgment of the Hon'ble jurisdictional High Court in the case of CIT Vs M/s Manjunatha Cotton & Ginning Factory, (Supra). The Co-ordinate Bench in the case of Shri L.Ravindra Vs ITO (Supra), had the occasion to consider an identical issue. In the said case, the Tribunal has discussed the validity of the penalty levied u/s 271(1)(c) of the Act in para-8 to 11 as under;

“08. We have considered the rival submissions. The Hon'ble Karnataka High Court in the case of CIT & Anr. v. Manjunatha Cotton and Ginning Factory (supra) has laid down the following principles to be followed in the matter of imposing penalty u/s.271(1)(c) of the Act.

“NOTICE UNDER SECTION 274

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(1)(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(1)(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 Ashok Pai reported in 292 ITR 11 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 MANU ENGINEERING reported in 122 ITR 306 and the Delhi High Court in the case of VIRGO MARKETING reported in 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.”

09. The final conclusion of the Hon’ble Court was as follows:

“63. In the light of what is stated above, what emerges is as under:

- a) Penalty under Section 271(1)(c) is a civil liability.*
- b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.*
- c) Willful concealment is not an essential ingredient for attracting civil liability.*
- d) Existence of conditions stipulated in Section 271(1)(c) is a sine qua non for initiation of penalty proceedings under Section 271.*
- e) The existence of such conditions should be discernible from the Assessment Order or order of the Appellate Authority or Revisional Authority.*
- f) Even if there is no specific finding regarding the existence of the conditions mentioned in Section 271(1)(c), at least the facts set out in Explanation 1(A) & (B) it should be*

discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.

g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(l)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1(B).

h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Appeals and the Commissioner.

i) The imposition of penalty is not automatic.

j) Imposition of penalty even if the tax liability is admitted is not automatic.

k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the assessing officer in the assessment order.

l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bonafide, an order imposing penalty could be passed.

m) If the explanation offered, even though not substantiated by the assessee, but is found to be bonafide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.

n) The direction referred to in Explanation IB to Section 271 of the Act should be clear and without any ambiguity.

o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the Assessing Authority.

p) Notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income

q) Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law.

r) *The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.*

s) *Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.*

t) *The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.*

u) *The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings.*

The assessment or reassessment cannot be declared as invalid in the penalty proceedings.”

10. *Perusal of the copy of the show cause notice issued u/s. 274 of the Act was filed before us at the time of hearing, shows that the AO has not spelt out as to whether penalty*

proceedings are being initiated for furnishing inaccurate particulars of income or for concealment of particulars of income. Such initiation of penalty proceeding has been held to be illegal by the Hon'ble High Court of Karnataka in the case of Manjunatha Cotton & Ginning Factory (supra). In the light of the aforesaid decision of the jurisdictional High Court, we are of the view that the order imposing penalty has to be cancelled. Accordingly the order imposing penalty is cancelled.

11. In view of the above conclusions, the other submissions made by the learned counsel for the assessee with regard to imposition of penalty when the income returned by the assessee is accepted are not being considered.

6. A similar view has been taken by the Tribunal in the case of M/s Mathoshree Builders Pvt.Ltd Vs DCIT Supra. Accordingly, following the judgment of Hon'ble jurisdictional High Court in the case of CIT Vs Manjunatha Cotton & Ginning Factory, (Supra) as well as the decisions of the Co-ordinate Benches (Supra), we hold that the notice issued u/s 274 of the Act, is bad in law and consequently, the penalty order passed u/s 271(1)(c) of the Act, for the assessment years 2007-08 & 2008-09 are squashed. Since we squashed the penalty order on the ground of validity, we do not propose to go into the merits of the penalty levied u/s 271(1)(c) of the Act.

7. In the result, the appeals filed by the assessee are allowed.

Pronounced in the open Court on the 29th June, 2015.

Sd/-

(JASON P BOAZ)
ACCOUNTANT MEMBER

D a t e d : 29-06-2015

Place: Bangalore

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

By order

AR, ITAT, Bangalore