

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK
'SMC' BENCH, CUTTACK
BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA No. 104/CTK/2015
Assessment Year : 2008-09

Swastik Ingot Private Limited, At: Gopapali, Vedvyas, Rourkela.	Vs.	DCIT, Rourkela.
PAN/GIR No. AAICS 4214 K		
(Appellant)	..	(Respondent)

Assessee by : Shri K.K.Bajoria, AR
Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 22 /03/ 2017
Date of Pronouncement : 22/03/ 2017

ORDER

This is an appeal filed by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 23.12.2014 for the assessment year 2008-09.

2. The sole issue involved in this appeal is that the Id CIT(A) erred in confirming the levy of penalty of Rs.6,44,930/- u/s.271(1)(c) of the Act.

3. At the outset, Id Authorised Representative of the assessee argued and submitted that the Assessing Officer in the penalty order while levying penalty has observed that the assessee has concealed particulars of income as well as furnished inaccurate particulars of income. According to the

decision of the Hon'ble Supreme Court in the case of CIT vs. SSA's. Emarld Meadows dated 11th January, 2017 passed in Special Leave to Appeal (CC No.11485/2016), the Assessing Officer has to categorically state in his order or notice issued u/s.271(1)(c) of the Act as to whether the assessee is guilty of concealment of income or furnishing of inaccurate particulars of income. He submitted that if the order or notice suffers from this infirmity, the penalty order cannot be sustained in law. Hence, he submitted that penalty of Rs.6,44,930/- imposed by the Assessing Officer u/s.271(1)(c) is, therefore, liable to be cancelled.

4. The Departmental Representative could not controvert the above submission of Id Authorised Representative of the assessee.

5. After considering the rival submissions and perusing the orders of lower authorities, I find that the facts in the present appeal are not in dispute and the Assessing Officer in the order passed u/s.271(1)(c) dated 26.3.2013 levied penalty of Rs.6,44,930/- observing as under:

"All these types of attempts amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. In view thereof, penalty may be imposed for either or both of such attempts."

Therefore, the facts of the present appeal are identical to the facts of the case before the Hon'ble Supreme Court in the case of SSA's. Emarld Meadows(supra) and, therefore, the decision of Hon'ble Supreme Court squarely applies to the case of the assessee. Hence, respectfully following the same, I cancel the levy of penalty of Rs.6,44,930/- u/s.271(1)(c) and allow the ground of appeal of the assessee.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 22/03/2017 in the presence of parties.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 22/03/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Swastik Ingot Private Limited, At: Gopapali, Vedvyas, Rourkela
2. The Respondent. DCIT, Rourkela
3. The CIT(A)-1, Bhubaneswar.
4. Pr.CIT-1, Bhubaneswar.
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack