

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 1622/Kol/2014
Assessment Year: 2010-11

Income-tax Officer, Wd-8(4), Kolkata	Vs.	M/s. Swastik Refinery Pvt. Ltd. (PAN: AADCS5999Q)
Appellant		Respondent

Date of Hearing	09.05.2017
Date of Pronouncement	24.05.2017
For the Appellant	Shri Nicholas Murmu, JCIT, Sr. DR
For the Respondent	Shri A. K. Tibrewal, FCA & Shri Amit Agarwal, Advocate

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the revenue against the order of Ld. CIT(A)-III, Kolkata dated 13.05.2014 for AY 2010-11 against the deletion of penalty levied by AO u/s. 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

2. At the outset itself, the Ld. AR while supporting the order of the Ld. CIT(A) submitted that the penalty order of AO is bad in law for another reason other than the reasons given by the Ld. CIT(A) to delete the penalty imposed by the AO. According to him, the notice issued u/s. 274 read with section 271 of the Act is bad in law and drew our attention to notice dated 11.01.2013 to point out that the notice did not specify for which charge the penalty is being initiated. We find that the notice u/s. 274 of the Act r.w.s. 271 of the Act dated 11.01.2013 served on the assessee wherein we note that the AO has not struck down the limb of charge/default for which the assessee is being served with the penalty notice. We find that the notice has been issued for having concealed the particulars of income or furnished inaccurate particulars of such income. We note that in a similar case the Hon’ble High court of Karnataka in the case of *CIT vs Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 (Kar)* has cancelled the penalty taking note of the

fact that the penalty notice did not spell out clearly as to whether the assessee has concealed the particulars of income or has furnished inaccurate particulars of Income. We also find that Hon'ble Karnataka High Court in the case of CIT Vs. SSA's Emerald Meadows, reported in (2016) 73 taxmann.com 241 (Kar) has held as under:

“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 ITR 565/218 Taxman 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 dismissed.”

We also find that this issue has travelled to Hon'ble Supreme Court through SLP by the department which has been reported in (2016) 73 taxmann.com 248 (SC), wherein also the Hon'ble Supreme Court upheld the order of Hon'ble Karnataka High court and dismissed the SLP filed by the revenue.

3. We note that since the penalty notice issued to the assessee dated 11.01.2013 did not spell out as to which default the assessee has committed for which penalty u/s. 271(1)(c) of the Act has been initiated, therefore, following the Hon'ble Karnataka High Court's order in Manjunatha Cotton & Ginning Factory (supra) and SSA's Emerald Meadows (supra), we confirm the order of Id. CIT(A) in allowing the appeal of the assessee. Therefore, appeal of the revenue is dismissed.

4. In the result, appeal of revenue is dismissed.

Order is pronounced in the open court on 24.05.2017.

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 24th May, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ITO, Ward-8(4), Kolkata.
2. Respondent – M/s. Swastik Refinery Pvt. Ltd., 9C, Lord Sinha Road, Kolkata-700 016.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.