

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE SHRI T.S. KAPOOR, ACCOUNTANT MEMBER
AND
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER

ITA No. 3590/Del/2019
(Assessment Year: 2001-02)

Mohan Exports India Pvt. Ltd, 8-9, Mohan House, Jamrudpur Community Centre, Kailash Colony Extension New Delhi - 110048. PAN: AAACM4168J	Vs.	DCIT, Circle-5(1), New Delhi
(Appellant)		(Respondent)

Assessee by: Shri N. K. chopra, CA.
Revenue by : Ms. Sweta Yadav, Sr. DR
Date of hearing 24/03/2022
Date of pronouncement 24/03/2022

ORDER

PER T.S. KAPOOR, A. M.:

The Assessee has preferred the instant appeal against the order dated 05.03.2019 impugned herein passed by the Id. Commissioner of Income tax (Appeals)-36, New Delhi (in short "Ld. Commissioner") u/s 250 of the Income Tax Act, 1961 (in short "the Act"), whereby the learned Commissioner has affirmed the levy of penalty u/s 271(1)(c) of the Act.

2. At the outset it was argued by the learned counsel for the Assessee that in the instant case the noticedated 25.03.2013 issued u/s 271(1)(c) read with section 274 of the Act is vague, as the same 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 and therefore the penalty is not leviable. The Assessee in support of its contention also relied upon various judgments of the Hon'ble Apex Court and of the Hon'ble High Courts. For the sake of brevity, we are referring few:

- (i) CIT Vs. SSA'S Emerald Meadows (2016) 242 Taxman 180 (SC);
- (ii) Principal CIT Vs. Goa Coastal Resorts and Recreation (P) Ltd. (2021) 130 Taxmann.com 379 (SC).

3. On the contrary the Ld. DR supported the orders passed by the authorities below and submitted that order under challenge does not suffer from any perversity, impropriety and/or illegality and hence needs no interference .

4. Heard the parties and perused the material available on record. The Assessee has challenged the penalty order on various grounds. In the instant case, the AO initiated penalty under section 271(1)(c) of the Act for 'furnishing inaccurate particulars of income and thereafter issued the notice u/s 274 read with 271(1)(c) of the Act, without specifying under 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 and finally imposed the penalty. The Assessee challenged the Imposition of penalty mainly on the basis of notice itself, therefore we deem it appropriate to decide the legal issue involved in the instant case, instead of going into merits of the case.

5. Hon'ble Apex Court in 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 of 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 of 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 upon 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."*

6. The Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar) observed that the levy of penalty has to be clear as to the limb under which it is being levied. As per Hon'ble High Court, where the Assessing Officer proposed to invoke first limb being concealment, then the notice has to be appropriately marked. The Hon'ble High Court held that the standard proforma of notice under section 274 of the Act without striking of the irrelevant clause would lead to an inference of non-application of mind by the Assessing Officer and levy of penalty would suffers from non-application of mind.

7. Even the Hon'ble High Court of Delhi in the case of M/s. Sahara India Life Insurance Company Ltd. 432 ITR 84 (Del.) while following the cases referred above, held as under:

“21. The Respondent had challenged the upholding of the penalty imposed under Section 271(1)(c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) and observed that the notice issued by the AO would be bad in law if it did not specify which limb of Section 271(l)(c) the penalty proceedings had been initiated under i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Karnataka High Court had followed the above judgment in the subsequent order in Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 Taxman.com 241(Kar), the appeal against which was dismissed by the Supreme Court of India in SLP No: 11485 of 2016 by order dated 5th August, 2016.

22. On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises. Thus, notice under Section 271(1)(c) r.w.s. 274 of the Act itself is bad in law. We, therefore, set-aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied.”

8. The penalty provisions of section 271(1)(c) of the Act are attracted, where the Assessee has concealed the particulars of income or furnished inaccurate particulars of such income. It is

also a well-accepted proposition that the aforesaid two limbs of section 271(1)(c) of the Act carry different meanings. Therefore, it is imperative for the Assessing Officer to specify the relevant limb so as to make the Assessee aware as to what is the charge made against him so that he can respond accordingly.

9. In the background of the aforesaid legal position and, having regard to the manner in which the Assessing Officer has issued the notice dated 25.03.2013 under section 274 read with 271(1)(c) of the Act, without specifying the limb under which the penalty proceedings have been initiated and proceeded with, apparently goes to prove that notice in this case has been issued in a stereotyped manner without applying mind which is bad in law, hence can not be considered a valid notice sufficient to impose penalty u/s 271(1)(c) of the Act and therefore we are of the considered view that under these circumstances, the penalty is not leviable as held by the various Court including Apex Court and hence, we have no hesitation to delete the penalty levied by the AO and affirmed by the Id. Commissioner.

10. In the result appeal filed by the Assessee stands allowed.

Order pronounced in open court on 24/03/2022.

-Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

-Sd/-
(T.S. KAPOOR)
ACCOUNTANT MEMBER

Dated: 24/03/2022

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

 SAG

ASSISTANT REGISTRAR
ITAT, New Delhi