

IN THE INCOME TAX APPELATE TRIBUNAL

DELHI BENCH "B": NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No. 1493/Del/2016

A.Y. : 2008-09

SH. SUMEET CHOPRA,
146, SUNDER NAGAR,
NEW DELHI – 110003
(PAN: AAFPC3647L)
(Appellant)

vs. ACIT, CIRCLE-52(1),
NEW DELHI

(Respondent)

Assessee by : Sh. Salil Aggarwal, Adv. & Shailesh
Gupta, Adv.
Department by : Sh. B.R. Mishra, Sr. DR

ORDER

H.S. SIDHU, JM

This appeal by the Assessee is directed against the Order of the Ld. Commissioner of Income Tax (Appeals)-18, New Delhi dated 7.12.2015 pertaining to assessment year 2008-09.

2. The Assessee has raised so many grounds, but the only effective ground is sustaining the order imposing penalty under section 271(1)© of the Act amounting to Rs. 8,55,403/-. However, during the hearing, the Ld. Counsel of the Assessee has filed an Application dated 12.4.2018 of the assessee seeking permission to raise additional ground, in view of the judgment of the Hon'ble Supreme Court of India in the case of NTPC vs. CIT reported in 229 ITR 383 and the decision in the case of M/s Jute Corporation

of India Ltd. vs. CIT reported in 187 ITR 688 (SC). The additional ground raised by the assessee read as under:-

“That the Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining the penalty so imposed under section 271(1)© of the Act, by failing to appreciate that the show cause notice so issued was defective, as there was no specific charge labeled in the said show cause notice and as such, the penalty deserves to be quashed.”

3. On the contrary, Ld. DR relied upon the orders of the authorities below and has tried to justify the action of the Assessing Officer in imposing the penalty in dispute. However, he opposed to admit the additional ground.

4. We have heard both the parties and perused the records. On the admission of additional ground, we find that the additional ground raised by the assessee is legal in nature and is squarely covered by the various decisions of the Coordinate Benches of the ITAT as well as decision of the Hon'ble Delhi High Court, hence, we are of the considered view that on the anvil of the decision of the Hon'ble Supreme Court of India in the case of NTPC Limited 229 ITR 383 (Supra), the additional ground raised by the assessee is purely legal ground and do not require fresh facts which is to be investigated and goes to the root of the matter. In the interest of justice, we admit the aforesaid additional ground raised by the assessee, in view of the case law of NTPC Limited (Supra) and proceed to decide the legal additional ground.

5. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

6. At the time of hearing, Ld. Counsel of the Assessee has stated that no specific allegation as to the concealment of particulars of income or furnishing of inaccurate particulars has been levied by the AO in the notice dated 01.12.2010 issued by him u/s. 271(1)© of the Act placed on file which clearly shows that the same is the standard format of the notice and AO has just ticked on the option of concealment of income or furnishing inaccurate particulars of such income. He further stated that the penalty imposed is liable to be quashed on legal grounds as the issue is squarely covered by the following decisions.:

- ITAT, Delhi decision in the case of ABR Auto Pvt. Ltd. vs. ACIT in ITA No 6236/Del/2015 dated 4.12.2017.
- ITAT, 'A' Bench, New Delhi decision dated 05.12.2017 in the case of Ashok Kumar Chordia vs. DCIT passed in ITA No. 5788 to 5790/Del/2014.
- Hon ble Karnataka High Court decision in the case of CIT & Ors. Vs. M/s Manjunatha Cotton and Ginnig Factory & Ors. (2013) 359 ITR 565
- Apex Court decision in the case of CIT & Anr. Vs. M/s SSA's Emerald Meadows in CC No. 11485/2016 dated 05.8.2016.

7. On the contrary, Ld. DR relied upon the orders of the authorities below.

8. We have heard both the parties and perused the relevant records, especially the orders of the revenue authorities alongwith the provisions of

law as well as the case law cited by the Ld. Counsel of the Assessee. I have also perused the Notice dated 01.12.2010 issued by the AO for initiation of penalty and directing the assessee to appear before him. For the sake of convenience, some of the contents of the penalty Notice dated 01.12.2010 are reproduced as under:-

“.....it appears to me that you:-

*** have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961 dated.....**

√* have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5.”.....

You are hereby required to appear before me at 11.00 AM/PM on 13.1.2010 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity to being heard in person or through authorized representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.”

8.1 After perusing the aforesaid contents of the Notice dated 01.12.2010, we are of the view that the AO has initiated the penalty for concealment of particulars of income or furnishing of inaccurate particulars, which is contrary to the provisions of law. We are of the view that notice issued by the AO u/s. 271(1)© read with Section 274 of the Act is bad in law as it does not specify which limb of section 271(1)© of the Act, the penalty

proceedings had been initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars. Therefore, the penalty in dispute is not sustainable in the eyes of law. Our aforesaid view is supported by the following decisions:-

- i) "CIT & Anr. Vs. M/s SSA's Emerald Meadows – 2015 (11) TMI 1620 – Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 Commissioner of Income Tax vs. Manjunatha Cotton and Ginning Factory (2013) (7) TMI 620- Karnataka High Court. Thus 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 – decided in favour of assessee."
- ii) CIT & Anr. Vs. M/s SSA's Emerald Meadows – Hon'ble Supreme Court of India – reported in 2016 (8) TMI 1145 – Supreme Court. The Apex Court held that High Court order confirmed (2015) (11) TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c)

to be bad in law as it did not specify which limb of Section 271(1)© 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 – Decided in favour of assessee.”

- iii) ITAT, 'A' Bench, New Delhi decision dated 05.12.2017 in the case of Ashok Kumar Chordia vs. DCIT passed in ITA No. 5788 to 5790/Del/2014 wherein the Tribunal has observed as under:-

*"7. We have heard both the parties and perused the orders passed by the Revenue Authorities alongwith the relevant records available with us. Firstly, we have perused the Notice dated 26.3.2013 issued by the AO for initiating the penalty and directing the assessee to appear before him at 11.30 AM on 26/04/2013 and issued a Show Cause to the assessee stating therein that **".....you have concealed the particulars of your income or furnished inaccurate particulars of such income..."**. After perusing the notice dated 26.3.2013 issued by the AO to the assessee, we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income or concealment of income as well as in the penalty order dated 30.9.2013 AO has stated that he is satisfied that the assessee has concealed particulars of his income, which*

is contrary to law. In view of above, the penalty is not sustainable in the eyes of law. Our aforesaid view is fortified by the following decisions:-

- i) "CIT & Anr. Vs. M/s SSA's Emerald Meadows - 2015 (11) TMI 1620 - Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 Commissioner of Income Tax vs. Manjunatha Cotton and Ginning Factory (2013) (7) TMI 620- Karnataka High Court. Thus 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 - decided in favour of assessee."*

ii) *CIT & Anr. Vs. M/s SSA's Emerald Meadows – Hon'ble Supreme Court of India – reported in 2016 (8) TMI 1145 – Supreme Court. The Apex Court held that High Court order confirmed (2015) (11) TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 – Decided in favour of assessee."*

8. *In the background of the aforesaid discussions and respectfully following the precedents, we delete the penalty in dispute and decide the issue in favor of the assessee and against the Revenue."*

iv) ITAT, 'D' Bench, New Delhi decision dated 26.5.2017 in the case of Rajender Jain vs. ACIT passed in ITA No. 6804/Del/2013 wherein the Tribunal has observed as under:-

"7. *We have heard both the parties and perused the orders passed by the Revenue Authorities alongwith the relevant records available with us. Firstly, we have perused the*

assessment order wherein the AO has recorded his satisfaction on the page 2, 2nd para viz. "I am satisfied that it is a fit case for initiation of penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income/concealment of income." We have also perused the notice dated 31.12.2007 issued by the AO for initiating the penalty and directing the assessee to appear before him at -----AM/PM on -----200- ---- and issued a Show Cause to the assessee stating therein that why an order imposing the penalty of amount should not be made u/s. 271(1)(c) of the I.T. Act, 1961. After perusing the notice dated 31.12.2007 issued by the AO to the assessee we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income/concealment of income, but in the penalty order dated 06.11.2009 he has stated that he is satisfied that the assessee has furnished the inaccurate particulars of income.

7.1 However, the Ld. CIT(A) has given clear finding regarding the furnishing of inaccurate particulars. For the sake of convenience, the relevant para no. 5.3.1 of the impugned order passed by the Ld. CIT(A) is reproduced as under:-

"5.3.1 The above findings of the Ld. CIT(A) clearly establishes that the appellant has concealed the income of Rs. 26,50,500/- and did not declare in the return of income inspite of admitting a disclosure of Rs. 40,00,000/- during survey. Thus, the appellant has furnished inaccurate particulars of his income. The facts of the case clearly reveal that the appellant tried to evade payment of taxes by furnishing inaccurate particulars of income. Therefore, I hold that the AO was fully justified in levying the penalty u/s. 271(1)(c) of the Act. The penalty levied by the AO is upheld. This ground of appeal is rejected."

8. Keeping in view of the aforesaid finding of the Ld. CIT(A), we are of the considered view that the AO has passed the assessment order wherein the AO has recorded his satisfaction on the page 2, 2nd para viz. "I am satisfied that it is a fit case for initiation of penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income/concealment of income." Further the AO vide his Notice dated 31.12.2007 for

*initiating the penalty and directed the assessee to appear before him at -----AM/PM on ----
----200----- and issued a Show Cause to the assessee stating therein that why an order imposing the penalty of amount should not be made u/s. 271(1)(c) of the I.T. Act, 1961. After perusing the notice dated 31.12.2007 issued by the AO to the assessee, we are of the view that the AO has initiated the penalty for furnishing inaccurate particulars of income/concealment of income, but in the penalty order dated 06.11.2009 he has stated that he is satisfied that the assessee has furnished the inaccurate particulars of income. In our view the penalty in dispute is not sustainable in the eyes of law, because the AO has not recorded any clear finding whether the assessee was guilty of concealment of income or furnishing of inaccurate particulars of income. Secondly, the notice u/s. 271(1)(c) has been issued to the assessee levying the penalty for furnishing of inaccurate particulars of income/concealment of income, whereas the penalty in dispute has been levied by the AO on account of furnishing of inaccurate particulars. In our view the penalty is not sustainable in the eyes of law. Our aforesaid view is fortified by the following decisions:-*

i) "CIT & Anr. Vs. M/s SSA's Emerald Meadows – 2015 (11) TMI 1620 – Karnataka High Court has held that Tribunal has correctly allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 Commissioner of Income Tax vs. Manjunatha Cotton and Ginning Factory (2013) (7) TMI 620-Karnataka High Court. Thus 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 – decided in favour of assessee."

ii) CIT & Anr. Vs. M/s SSA's Emerald Meadows – Hon'ble Supreme Court of India – reported in 2016 (8) TMI 1145 – Supreme Court. The Apex Court held that High Court order confirmed (2015) (11) TMI 1620 (Supra) – Karnataka High Court. Notice issued by AO under section 274 read with section 271(1)(c) to be bad in law as it did not specify which limb of Section 271(1)© 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 – Decided in favour of assessee.”

8.1 In the background of the aforesaid discussions and respectfully following the precedents, we delete the penalty in dispute and decide the issue in favor of the assessee and against the Revenue.”

7. Keeping in view of the aforesaid discussions and respectfully following the aforesaid precedents, we cancel the penalty in dispute by respectfully following the aforesaid decisions and allow the additional ground raised by the assessee. Since the penalty has been cancelled, the other grounds have become academic and need not be adjudicated.

8. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced on 13/04/2018.

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date: 13/04/2018

SRBhatnagar

Copy forwarded to: -

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

Assistant Registrar, ITAT, Delhi Benches