

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.853/Del/2019

Assessment Year: 2014-15

Subhash Chand Gupta & Sons (HUF) 43/1, Rajpura Road, New Delhi-110054 PAN No.AABHS2009G (APPELLANT)	Vs	ITO Ward – 35 (4) New Delhi (RESPONDENT)
---	----	--

Appellant by	Sh. P. C. Yadav, Advocate
Respondent by	Sh. S. L. Anuragi, Sr. DR

Date of hearing:	13/08/2019
Date of Pronouncement:	07/10/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 27.07.2018 of the CIT(A)-12, New Delhi relating to A. Y. 2014-15.

2. Levy of penalty of Rs.3,59,591/- by the Assessing Officer u/s.271(1)(c) of the IT Act which has been confirmed by the CIT(A) is the only issue raised by the assessee in the grounds of appeal.

3. Facts of the case, in brief, are that the assessee is an HUF and filed the return of income on 29.07.2014 declaring total income of Rs.12,47,740/-. The Assessing Officer completed the

assessment u/s.143(3) on 23.12.2016 determining the total income at Rs.18,57,743/- wherein he made addition of Rs.18,57,743/- u/s. 68 r.w.s. 115 BBE of the IT Act on account of sale of shares of M/s.CCL International Limited which were purchased at a cost of Rs.6,10,000/- but sold at Rs.18,57,743/- within a period of 8 months from the date of purchase and on which concessional rate of tax was claimed. The Assessing Officer thereafter initiated penalty proceedings u/s. 271 (1) (c) of the IT Act. Rejecting the various explanation given by the assessee and relying on various decisions the Assessing Officer levied penalty of Rs.3,59,591/- u/s. 271 (1) (c) of the IT Act. being 100% of the tax sought to be evaded. In appeal the Ld. CIT(A) sustained the penalty so levied by the Assessing Officer.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal :-

1. *The order of CIT (A) is bad in law and on facts.*
2. *The CIT(A) has failed to appreciate that the proceedings of 271(1)(C) are void ab initio as the same has been initiated on the basis of non specific notice issued under section 274.*
3. *The CIT(A) has erred in not appreciating that the impugned penalty has been initiated and levied without asking any reply from the assessee/ without issuing any show cause to explain, during the course of assessment proceeding as evident from order sheet entry.*
4. *The CIT(A) has further erred in not appreciating that the Ld AO is void ab initio as the Ld AO has failed to specify the charge against the assessee under which the notice under section 274 of*

the Act has been issued.

5. *The Ld CIT(A) has failed to appreciate that furnishing of inaccurate particular and concealment of income are two separate connotation and hence it is incumbent upon the AO to specify the particular charge against such assessee who has to be penalized under section 271(1)(C) of the Act.*
6. *Without Prejudice to the above the CIT (A) has failed to appreciate that all particulars of income were fully disclosed by the assessee at the time of filing of return of Income and hence it cannot be said that assessee has filed wrong particulars of his income*
7. *The CIT(A) has further failed to appreciate that assessee has fully disclosed the income from short term capital gain in its (ROI) filed originally and hence it is not a case of concealment of income.*
8. *Without prejudice to the above, the CIT(A) has erred in law and on facts in sustaining the penalty under the provisions of section 271 (1)(C) ignoring that it is a case where there is only change of head on income and no concealment of income at all.*
9. *The CIT(A) has erred in law and on facts in sustaining the levy of penalty of Rs 3,59,591/- ignoring that assessee has made disclosed the particulars of income in an open and bonafide manner.*
10. *The assessee craves leave to add alter modify and ground of appeal at the time of hearing of the appeal.*

5. The Ld. Counsel for the assessee, at the outset, submitted that the notice issued by the Assessing Officer at the time of initiation of penalty proceedings, which is jurisdictional notice, shows that it is not clear as to under which limb of the provisions the penalty has been levied. Relying on various

decisions including the decision of Hon'ble Karnataka High Court in the case of CIT Vs. M/s. Manjunath Cotton & Ginning reported in 359 ITR 565 and in the case of CIT Vs. M/s. SSA's Emerald reported in (2016) 73 taxman.com 241, he submitted that the penalty so levied was held to be not valid when the inappropriate words in the notice were not struck off. He submitted that the SLP filed by the revenue against the order of the Hon'ble Karnataka High Court has been dismissed by the Hon'ble Supreme Court. Referring to the decision of the coordinate bench of the Tribunal in the case of the sister concern namely Shobhit Gupta (HUF) Vs. ITO vide ITA No.6765/Del/2018 order dated 03.04.2019 he submitted that under identical circumstances the Tribunal has cancelled the penalty so levied by the Assessing Officer and sustained by the CIT(A). He accordingly submitted that this being a covered matter in favour of the assessee the penalty so levied and sustained by the CIT(A) is not in accordance with law and, therefore, has to be deleted.

6. So far as the merit of the case is concerned he submitted that the assessee has shown the transaction of sale and purchase of shares in an open and bonafide manner and, therefore, it cannot be said to be a case of concealment of income. Further the assessee has already paid the tax by surrendering the amount and the various documents filed by the assessee during the course of assessment proceedings have not been found to be false or untrue. Referring to the decision of Hon'ble Supreme Court in the case of CIT Vs. Reliance

Petroproducts reported in 322 ITR 158 and various other decisions he submitted that the penalty levied by the Assessing officer and sustained by the CIT(A) should be deleted.

7. The Ld. DR on the other hand heavily relied on the order of the CIT(A). He submitted that the assessee during the course of assessment proceedings had surrendered the income of Rs.18,57,743/- to be taxed under the head "income from other source" as against the claim of "short term capital gain". The assessee could not contradict the findings given by the Assessing Officer that assessee had obtained accommodation entry to introduce its unaccounted income in the form of short term capital gain on penny stocks of M/s. CCL International. Relying on various decisions the Ld. DR submitted that the penalty levied by the Assessing Officer and sustained by the CIT(A) should be upheld and the ground raised by the assessee should be dismissed.

8. So far as the non striking of the inappropriate words in the penalty notice is concerned he submitted that the Assessing Officer in the assessment order has clearly mentioned the twin defaults i.e. furnishing of inaccurate particulars of income and also concealment of particulars of income. The penalty order also mentions both the defaults and, therefore, the contention of the assessee that the Assessing Officer has not clearly mentioned the default for which penalty proceedings were initiated is not correct.

9. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I find the

Assessing Officer in the instant case has levied penalty of Rs.3,59,591/- u/s. 271 (1) (c) of the IT Act which has been upheld by the CIT(A). It is the submission of the Counsel for the assessee that the notice issued u/s. 274 r.w.s. 271 (1) (c) of the IT Act does not specify the exact charge for which penalty has been levied. The copy of the notice issued u/s. 274 r.w.s. 271 (1) (c) of the IT Act 1961 dated 23.12.2016 reads as under :-

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961.

“To,

*M/s Subhash Chand Gupta and Sons (IIUF)
43/1, Rajpur Road
Civil Lines, Delhi-110054*

PAN: AABHS2009G

Whereas in the course of proceedings before me for the assessment year 2014-15 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 14.09.2016.
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 requested to appear before me at 11:30 A.M. on 23.01.2017 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 of this an opportunity of being heard in person or through authorised 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 of I.T. Act, 1961.

*(Archana Chaturvedi)
Income Tax Officer
Ward-35(4), New Delhi”*

10. I find under identical circumstances the coordinate Bench of the Tribunal in the case of Sohbit Gupta (HUF) a sister concern of the assessee has cancelled the penalty levied u/s. 271 (1) (c) of the Act by observing as under :-

6. We have heard the rival submissions perused the orders of lower authorities and materials available on record. We find that the facts in the present appeal are not in dispute and the Assessing Officer in the notice issued u/s 274 read with section 271(l)(c) dated 23.12.2016 has not specified the exact charge viz, whether the charge is that the assessee has furnished inaccurate particulars of income or “concealed particulars of income” by striking out the irrelevant portion of printed show cause notice.

*7. Hon'ble Apex Court vide judgment 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(l)(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(l)(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(l)(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 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."*

8. *Bare perusal of the notice issued u/s 271(l)(c) apparently goes to prove that the Assessing Officer initiated the penalty proceedings by issuing the notice u/s 274/271(l)(c) of the Act without specifying whether the assessee has concealed "particulars of income" or assessee has furnished "inaccurate particulars of income" so as to provide adequate opportunity to the assessee to explain the show cause notice. Rather notice in this case has been issued in a stereotyped manner without applying any mind which is bad in law, hence is not a valid notice sufficient to impose penalty u/s 271 (1)(c) of the Act.*

9. *The penalty provisions of section 271(l)(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 was imperative for the Assessing Officer to strike- off the irrelevant limb so as to make the assessee aware as to what is the charge made against him so that he can respond accordingly. 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 clauses would lead to an inference of non-application of mind by the Assessing Officer. The Hon'ble Supreme Court in the case of Dilip N. Shroff vs JCIT, 291 ITR 519(SC) has also noticed that where the Assessing Officer issues notice under section 274 of the Act in the standard proforma and the inappropriate words are not deleted, the same would postulate that the Assessing Officer was not sure as to whether he was to proceed on the basis that the assessee had concealed the particulars of his income or furnished inaccurate particulars of income. According to the Hon'ble Supreme Court, in such a situation, levy of penalty suffers from non-application of mind. In the background of the aforesaid legal position and, having regard to the manner in which the Assessing Officer has issued notice under section 274 r.w.s. 271(l)(c) of the Act

dated 23.12.2016 without striking off the irrelevant words, the penalty proceedings show anon-application of mind by the Assessing Officer and is, thus, unsustainable.

10. *The facts of the present appeal are identical to the facts of the case before the Hon'ble Karnataka High Court in the case of SSA's. Emarld Meadows (supra). In the instant case the AO in the notice issue u/s 274 read with section 271(l)(c) of the Act has not specified as to whether the assessee has furnished inaccurate particulars of his income or concealed his income. Hence, respectfully following the quoted decision of Hon'ble Karnataka High Court, we cancel the order of the Assessing Officer dated 28.06.2017 levying penalty of Rs.3,63,590/- and allow the ground of appeal of the assessee.*

11. I find the Hon'ble Delhi High court in the case of PCIT Vs. Sahara India Life Insurance Company Limited in ITA No.475/2019 order dated 02.08.2019 has observed 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 359ITR 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(1) (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 of2016 by order dated 5th August, 2016. ”

12. Respectfully following the decisions cited above I am of the considered opinion that levy of penalty by the Assessing Officer u/s. 271 (1) (c) of the IT Act which has been upheld by the CIT(A) is bad in law since the notice does not specify under which limb of section 271 (1) (c) of the IT Act the penalty proceedings have been initiated. Therefore, the penalty levied by the Assessing Officer and sustained by Ld. CIT(A) is cancelled. The grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 07.10.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 07.10.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	29.08.2019
Date on which the typed draft is placed before the dictating Member	02.09.2018
Date on which the approved draft comes to the Sr.PS/PS	07.10.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	07.10.2019
Date on which the fair order comes back to the Sr. PS/ PS	07.10.2019
Date on which the final order is uploaded on the website of ITAT	07.10.2019
Date on which the file goes to the Bench Clerk	07.10.2019
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

TAXPUNDIT.ORG