

(JP-ITAT) 2020 ITL 6

SHRI RAJENDRA KUMAR KHANDELWAL V. D.C.I.T., CENTRAL CIRCLE, KOTA.

IN THE ITAT OF JAIPUR

No.- ITA No. 1094/JP/2019

DATED - 3-01-2020

This is an appeal filed by the assessee against the order of Id.CIT(A)-2, Jaipur dated 24/06/2019 for the A.Y. 2009-10 in the matter of imposition of penalty U/s 271(1)(c) of the Income Tax Act, 1961 (in short, the Act), wherein the assessee has raised following grounds of appeal:

“1. The impugned penalty order u/s 271(1)(c) dated 24/06/2019 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.

2. ? 3,71,743/-: The ld. CIT(A) erred in law as well as on the facts of the case confirming the penalty imposed u/s 271 (1)(c) of the Act. The penalty so imposed by the AO and confirmed by the ld. CIT(A), being totally contrary to the provisions of law and facts kindly be deleted in full.

3. That the show cause notice issued u/s 274 and the consequent impugned penalty order dated 24/06/2019, is quite vague and does not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated and/or imposed i.e. whether for concealment of particulars of income or furnishing or inaccurate particulars of income. The impugned penalty order being contrary to the judicial principle laid down kindly be quashed.

4. That appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

2. Rival contentions have been heard and record perused. Facts in brief are that the assessee is having income from capital gains and interest.

After issuance of notice U/s 148 of the Act, the A.O. initiated reassessment proceedings U/s 147 of the Act. While completing the assessments u/s 147/143(3) of the Act and with respect to the income so offered in the return of income and accepted by the AO, the AO initiated penalty proceedings u/s 271(1)(c) and notice u/s 274 dated 05.12.2016 was issued in response to which the assessee filed a detailed reply dated 27.12.2016. The AO, however, felt dissatisfied and held that the assessee has concealed his particulars of income and concealed his taxable income and finally, imposed the penalty of ? 3,71,743/- u/s 271(1)(c) of the Act. By the impugned order, the

Id. CIT(A) has confirmed the action of the A.O., against which the assessee is in further appeal before the ITAT.

3. The assessee has challenged the merit of the penalty imposed in so far as there was no variation in the income assessed vis a vis income returned U/s 147 of the Act. The assessee has also challenged the validity of penalty order on the plea of show cause U/s 274 and consequent impugned penalty order U/s 271(1)(c) of the Act dated 24/06/2019 is vague.

4. The Id DR has relied on the orders of the authorities below and contended that the A.O. was correct in imposing penalty with respect to interest income not shown by the assessee.

5. It was argued by the Id AR that the entire income of ₹ 14,10,347/- was interest income only and it was TDS suffered income.

Admittedly, the same amount was shown in the return of income filed in repose to Section 148 of the Act. It is not the case of the AO that even after issuance of notice u/s 148 of the Act the assessee did not disclose the true and correct income fully inasmuch as admittedly there is no variation in the returned income and assessed income.

Also it is not the case of the AO that the assessee did file the return of income initially u/s 139(1) of the Act, wherein the interest income was not disclosed fully/partly and therefore there was a concealment when assessed with the assessee's income. Thus, it is clear that there is no difference between the returned and assessed income.

6. So far as the assessee's allegation regarding vagueness in the notice U/s 274 of the Act is concerned, I found on perusal of the show cause notice issued u/s 274 r/w S. 271(1)(c) dated 05.12.2016, wherein it is not at all clear as to for what precise charge, the assessee was asked to show cause viz. whether the charge is that the assessee has furnished inaccurate particulars of income or it was for concealing particulars of such income inasmuch as a bare perusal of the said show cause notice clearly reveal that the inappropriate words/unwanted charge has not been struck off. The AO neither scored out nor ticked which particular part of alleged offence, he was relying inasmuch as the word or has been used between the two offences in the SCN.

7. The extract from SCN, is reproduced hereunder:

"x x x it appears that you have concealed the particulars of your income or furnished inaccurate particulars of income."

In fact, this confusion with the AO even continued while passing the impugned penalty order inasmuch as at the end of the order, while concluding and computing the penalty, the AO has stated as under " --- concealed income/ inaccurate particulars of income - - ₹ 14,10,350/-". Thus, even while imposing the penalty he was not sure, on which limb he imposed the penalty.

8. With respect to above factual position, I have deliberated on the judicial pronouncements cited by the Id AR in the case of CIT & Anr. Vs Manjunatha Cotton and Ginning Factory 359 ITR 565 (Karn) which was subsequently followed by the Hon'ble Gujarat High Court in the case of New

Sorathia Engineering Co. Vs CIT (2006) 282 ITR 0642 (Guj) and other judicial pronouncements as placed on the record, more precisely decision of the ITAT Jaipur Benches in the case of Shri Ramesh Chand Bansal Vs DCIT in ITA No. 398, 399, 400 & 401/JP/2015 vide order dated 21.06.2018, wherein it was held that:

“.....Thus, the AO has not specified which limb of the provision, the assessee was asked to reply. This does not meet with the requirement of law. The Hon'ble Karnataka High Court in the case of CIT vs. M/s Manjunatha Cotton & Ginning Factory &Ors.(2013) 359 ITR 565 (Karn) held that sending printed form where all the grounds mentioned in S. 271 would not satisfy the requirement of law. The assessee should know the ground which he has to meet specifically, otherwise, the principle of natural justice is offended on the basis of such proceedings, no penalty could be could be imposed to the assessee.....”

X X X X

.....Accordingly, in view of the above facts and circumstances of the case as well as the decisions cited (supra) we hold that the notices issued u/ s 274 r.w.s. 271(1)(c) of the Act dated 19.03.2013 are not valid and the same are quashed. Consequential levy of penalty in all the years are also deleted. Since we have deleted the penalty on legal Ground No. 4, therefore, the other legal ground being academic is not adjudicated upon.

4.0. In the result, the appeals of the assessee are allowed."

9. I had perused the notice issued U/s 274 read with Section 271(1)(c) of the Act dated 05/12/2016 as placed on the record. It is clear from the notice so issued that the Assessing Officer had levied charge of concealed the particulars of income or furnished inaccurate particulars of such income. In view of the judicial pronouncements discussed hereinbelow, the notice issued under section 274, read with Section 271 (1) (c) of the Act should specify 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. In the absence of which no penalty should be levied on the assessee as determination of such limb is sine qua non for imposition of penalty under section 271 (1) (c) of the Act.

10. There can be no doubt that penalty u/s. 271(1)(c) of the Act is levied for concealing particulars of income or for furnishing inaccurate particulars of such Income, which are the two limbs of this provision. In other words, it is only when the authority invested with the requisite power is satisfied that either of the two events existed in a particular case that proceedings u/s. 271(1)(c) of the Act are initiated. This pre-requisite should invariably be evident from the notice issued u/s. 274 r.w.s. 271 of the Act, which is the jurisdictional notice, for visiting an assessee with the penal provision. The intent and purpose of this notice is to inform the assessee as to the specific charge for which he has been show caused so that he could furnish his reply without any confusion and to the point. In the present case, neither the assessee nor anyone else could make out as to whether the notice u/s. 274 r.w.s. 271 of the Act was issued for concealing the particulars of income or for furnishing inaccurate particulars of such income disabling it to meet with the case of the Assessing Officer.

There are a catena of judgments highlighting the necessity for identifying the charge for which the assessee is being visited and in all those decisions, Hon'ble Courts have repeatedly held that where the jurisdictional notice is vague, similar to the one in the present case, the consequent levy cannot be sustained.

11. In this connection, reliance is first placed upon the judgment of the Hon'ble Karnataka High Court In the case of CIT v. Manjunatha Cotton and Ginning Factory & Ors. and Veerabhadrapa Sangappa and Co. (359 ITR 565, 577, 601, 603-604) in which the facts are similar. In those bunch of tax appeals, several assessee and several issues were involved. In so far as I.T.A. No. 5020 of 2009 was concerned, one of the substantial questions on which the appeal was filed by the revenue was:

"Whether the notice issued under section 271(1)(c) in the printed form without specifically mentioning whether the proceedings are initiated on the ground of concealment of income or on account of furnishing of inaccurate particulars is valid and legal?"

12. While answering the above in favour of the assessee, the following findings were recorded by the Hon'ble Court:

"61. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment furnishing inaccurate particulars of income are different Thus, the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The apex court in the case of Ashok Pai reported in [2007] 292 ITR 11 (SC) at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of Manu Engineering Works reported in [1980] 122 ITR 306 (GUJ) and the Delhi High Court in the case of CIT v. Virgo Marketing P Ltd reported in [2008] 171 Taxman 156 has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment then the notice has to be appropriately marked Similar is the case for furnishing inaccurate particulars of income. "(p) Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c) i.e. whether it is for concealment of income or for furnishing of incorrect particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind.

13. Thereafter, in so far as the manner in which the statutory notice was required to be issued, the Hon'ble Court concluded thus:

(p) Notice u/s 274 of the Act should be specifically state the grounds mentioned in section 271(1)(c), i.e. whether it is for concealment of income or for furnishing of incorrect particulars of income.

14. Finally, in concurring with the findings recorded in the order of the Tribunal, it was held thus:

66. In view of the aforesaid law, we are of the view that the Tribunal was justified in holding that the entire proceedings are vitiated as the notice issued is not in accordance with law and accordingly justified in interfering with the order passed by the appellate authority as well as the assessing authority and in setting aside the same. Hence, we answer the substantial questions of law framed in this case in favour of the assessee and against the Revenue. "

15. The aforesaid judgment was unsuccessfully challenged by the revenue before the Supreme Court, as it was rejected vide Petition for Special Leave to Appeal (C) No. 13898/2014 dated 11.07.2016. Reliance was next placed upon another judgment of the Hon'ble Karnataka High Court in the case CIT v. SSA'S Emerald Meadows (Income Tax Appeal No. 380 of 2015 decided on 23.11.2016). In this case also a similar situation arose in as much as the Hon'ble Court was required to adjudicate on the following substantial question:

(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?"

16. The aforesaid question was dealt with by the Hon'ble Court in favour of the assessee in the following words:

"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 Commissioner of 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."

17. The SLP filed by the department in the aforesaid case also was dismissed by the Hon'ble Supreme Court vide Petition for Special Leave to Appeal (C) No. /2016 (CC No. 11485/2016) dated 05.08.2016.

18. The Hon'ble Bombay High Court in the case of CIT v. Shri Samson Perinchery [Income Tax Appeal No. 1154 of 2014 and others dated 05.01.2017] had also occasion to consider a similar issue. In this case, though proceedings u/s. 271(1)(c) of the Act were initiated for furnishing of inaccurate particulars of income, in the notice issued u/s. 274 r.w.s. 271 of the Act in the standard form, the charge for which it was issued was also not identified, as in the present case. In deleting the levy, so far as non-specification of the default in the jurisdictional notice, the following findings were recorded by the Hon'ble Bombay High Court:

"7 Therefore, the issue herein stands concluded in favour of the Respondent-Assessee by the decision of the Karnataka High Court in the case of Manjunath Cotton and Ginning Factory (supra). Nothing has been shown to us in the present facts which would warrant our taking a view different from the Karnataka High Court in the case of Menjuneth Cotton and Ginning Factory (supra).

8. In view of the above, the question as framed do not give rise to any substantial question of law Thus, not entertained"

19. The Hon'ble Supreme Court in Dilip N. Shroff v/s JCIT, [2007] 291 ITR 519 (SC), has observed that while issuing the notice under section 274 r/w section 271, in the standard format, the Assessing Officer should delete the inappropriate words or paragraphs, otherwise, it may indicate that the Assessing Officer himself was not sure as to whether he had proceeded on the basis that the assessee had concealed his income or had furnished inaccurate particulars of income. This, according to the Hon'ble Supreme Court, deprives the assessee of a fair opportunity to explain its stand, thereby, violates the principles of natural justice. As held by the Hon'ble Supreme Court in CIT v/s Reliance Petroproducts Pvt. Ltd. [2010] 322 ITR 158 (SC), the aforesaid principle laid in Dilip N. Shroff (supra) still holds good in spite of the decision of the Hon'ble Supreme Court in UOI v/s Dharmendra Textile Processors (2008) 306 ITR 277 (SC). The Hon'ble Jurisdictional High Court in CIT v/s Smt. Kaushalya & Ors., [1995] 216 ITR 660 (Bom), observed that notice issued under section 274 must reveal application of mind by the Assessing Officer and the assessee must be made aware of the exact charge on which he had to file his explanation.

The Court observed, vagueness and ambiguity in the notice deprives the assessee of reasonable opportunity as he is unaware of the exact charge he has to face. The Hon'ble Jurisdictional High Court in Samson Perinchery (supra), following the decision of Hon'ble Karnataka High Court in CIT v/s Manjunatha Cotton & Ginning Factory, [2013] 359 ITR 565 (Kar.), held, order imposing penalty has to be made only on the ground on which the penalty proceedings has been initiated.

20. The Hon'ble Jurisdictional High Court in the case of Shevata Construction Co. Pvt. Ltd. (supra) has in para 9 as under:

"..... Taking into consideration the decision of the Andhra Pradesh High Court which virtually considered the subsequent law and the law which was prevailing on the date the decision was rendered on 27.08.2012. In view of the observation made in the said judgement, we are of the opinion that the contention raised by the appellant is required to be accepted and in the finding of Assessing officer in the assessment order it is held that the A.O. has to give a notice as to whether he proposes to levy penalty for concealment of income or furnishing inaccurate particulars. He cannot have both the conditions and if it is so he has to say so in the notice and record a finding in the penalty order"

21. In view of the above discussion, we conclude that the impugned penalty order is contrary to the judicial principle laid down in various decisions of the Hon'ble Supreme Court, High Court and the Coordinate Bench as discussed above in so far as notice issued U/s 274 of the Act and consequent impugned penalty order dated 24/06/2019 is quite vague and does not specify which

limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated and/or imposed i.e. whether for concealment of particulars of income or furnishing inaccurate particulars of income.

22. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 03rd January, 2020.