

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1154 OF 2014
WITH
INCOME TAX APPEAL NO.953 OF 2014
WITH
INCOME TAX APPEAL NO.1097 OF 2014
WITH
INCOME TAX APPEAL NO.1226 OF 2014

The Commissioner of Income Tax-11 .. Appellant.
v/s.
Shri Samson Perinchery .. Respondent.

Mr. Ashok Kotangle with Ms. Padma Divakar, for the Appellant in all the Appeals.
Mr. V. S. Hadade, for the Respondent in all the Appeals.

**CORAM: M.S.SANKLECHA, &
A.K.MENON, JJ.
DATE : 5th JANUARY, 2017.**

P.C:-

These Appeals under Section 260-A of the Income Tax Act, 1961 (the Act), challenge a common order dated 11th October, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The common impugned order deleted the penalty imposed upon the Respondent-Assessee for the Assessment Years 2003-04, 2004-05, 2005-06 and 2006-07.

2 All these appeals raises an identical question of law save the difference in the quantum, which read as under:-

“ Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the penalty levied under Section 271(1)(c) of the IT Act, 1961?”

3 The impugned order of the Tribunal deleted the penalty imposed upon the Respondent-Assessee. This by holding that the initiation of penalty under Section 271 (1)(c) of the Act by Assessing Officer was for furnishing inaccurate particulars of income while the order imposing penalty is for concealment of income. The impugned order holds that the concealment of income and furnishing inaccurate particulars of income carry different connotations. Therefore, the Assessing Officer should be clear as to which of the two limbs under which penalty is imposable, has been contravened or indicate that both have been contravened while initiating penalty proceedings. It cannot be that the initiation would be only on one limb i.e. for furnishing inaccurate particulars of income while imposition of penalty on the other limb i.e. concealment of income. Further, the Tribunal also noted that notice issued under Section 274 of the Act is in a standard proforma, without having striked out irrelevant clauses therein. This indicates non-application of mind on the part of the Assessing Officer while issuing the penalty notice.

4 The impugned order relied upon the following extract of Karnataka High Court's decision in ***CIT v/s. Manjunath Cotton and Ginning Factory 359 ITR 565*** to delete the penalty:-

“ 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 as 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 reported in 122 ITR 306 and the Delhi High Court in the case of Virgo Marketing P. Ltd., reported in 171 Taxmn 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. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind.”

5 The grievance of the Revenue before us is that there is no difference between furnishing of inaccurate particulars of income and concealment of income. Thus, distinction drawn by the impugned order is between Tweedledum and Tweedledee. In the above view, the deletion of the penalty, is unjustified.

6 The above submission on the part of the Revenue is in the face of the decision of the Supreme Court in **Ashok Pai v/s. CIT 292 ITR 11** [relied upon in Manjunath Cotton & Ginning Factory (supra)] – wherein it is observed that concealment of income and furnishing of inaccurate particulars of income in Section 271(1)(c) of the Act, carry different meanings/ connotations. Therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under Section 271(1)(c) of the Act, for initiation of penalty proceedings will not warrant/ permit penalty being imposed for the other breach. This

is more so, as an Assessee would respond to the ground on which the penalty has been initiated/notice issued. It must, therefore, follow that the order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated, and it cannot be on a fresh ground of which the Assessee has no notice.

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 Manjunath 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.

9 Accordingly, all these **Appeals** are **dismissed**. No order as to costs.

(A.K.MENON,J.)

(M.S.SANKLECHA,J.)