IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DLEHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No. 830/Del/2017
Assessment Year: 2003-04

M/s. Singhal Strips Ltd., **440/1, holanath Nagar,** **Shahdara, Delhi.**	**vs.**	**DCIT, Circle 8(1),** **New Delhi.**
PAN : AAACS0344J (Appellant)		(Respondent)

Appellant by : Sh. Satyajit Goel, CA
Respondent by: Sh. N.K. Bansal, Sr. DR

Date of hearing: 28.10.2021
Date of order : 03.11.2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 05.01.2017 passed by the Commissioner of Income Tax (Appeals)-22, New Delhi ("Ld. CIT(A)") for the assessment year 2003-04, M/s. Singhal Strips Ltd.("the assessee"), preferred this appeal.

2. Assessee is a company. It filed its return of income for the assessment year 2003-04 on 28/11/2003 declaring a loss of Rs. 3,69,13,760/-. Assessment under section 143(3) of the Income Tax Act, 1961 (for short "the Act") was however, complete at a loss of Rs. 1,84,

91,661/-by making certain additions. Assessee went in appeal before the Ld. CIT(A), who confirmed the additions. When the assessee carried the matter to the ITAT, the impugned order was set aside and the matter was remanded to the file of the learned Assessing Officer to decide the issue afresh.

3. Subsequently, an assessment order under section 254/143(3) of the Act was passed on 11/12/2007 computing total loss at Rs.3,69,78,322/-against the returned loss of Rs.1,84,91,661/-by making an addition of Rs.17,57,73, 101/-on account of financial expenses and Rs. 9,13,560/- on account of excise duty. Learned Assessing Officer, simultaneously, initiated proceedings under section 271(1)(c) of the Act and concluded them by order dated 10/3/2014 with the levy of penalty of Rs. 67,93,848/-being the minimum penalty at hundred percent of the tax sought to be evaded. Ld. CIT(A), by order dated 5/1/2017 confirmed the same and dismissed the appeal. Hence the assessee is in appeal before us against the levy of penalty.

4. Argument of the Ld. AR is twofold. Firstly, he submits that there is neither concealment of income nor furnishing of inaccurate particulars thereof but it is only on the difference of opinion the addition was made and therefore none of the limbs of section 271(1)(c) of the Act is applicable to the facts of the case. Secondly, he submits that neither in the assessment order nor the notice issued under section 274 of the Act, the charges not mentioned with any specificity as to whether it is for concealment of income or for furnishing of inaccurate particulars thereof, the penalty was levied. He submits that on either of the grounds the levy of penalty cannot be sustained. He placed reliance on the decisions of the

Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565, Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 taxman.com 241 (Kar) and also the decision of the Hon'ble jurisdictional High Court in the case of Ld. PCIT vs. Sahara India Life Insurance Co Ltd in ITA No. 475 and batch of 2019 in support of his contention that penalty cannot be sustained.

5. Per contra, it is the submission of the Ld. DR that the expenditure which is not allowable in the eyes of law and still claimed by the assessee is clearly a form of tax evasion and false under the term "furnishing of inaccurate particulars of income" and, therefore, the authorities below are justified in levying and sustaining the penalty. Reliance is placed on the decision reported in CIT vs. Zoom Communications Private Limited, 327 ITR 510. He further placed reliance on the decision of the Hon'ble Madras High Court in the case of Sundaram Finance Ltd vs. CIT (2018) 403 ITR 407 (Madras), Ld. DR submitted that the assessee understood the purport of the notice and without raising any objection whatsoever they have participated in the penalty proceedings as well as the proceedings before the Ld. CIT(A) and, therefore, no prejudice was caused to the case of the assessee. He therefore, prayed to dismiss the appeal.

6. We have gone through the record in the light of the submissions made on either side. As could be seen from the assessment order, during the course of the assessment proceedings, the assessee produced the books of accounts which were examined by the ld. Assessing Officer. It is an admitted fact that the assessee had debited in its P&L Account a sum of Rs. 1,76,29,680/-towards payments were working capital from banks and on term loans availed from HFC/HSIDC and on the ground that no

details were furnished, the same was disallowed. It is further mentioned in the assessment order itself that the order of the Board for Industrial and Financial Reconstruction (BIFR) reveals that the bank of Baroda was appointed as operating agency to preparer rehabilitation scheme for the company keeping in view the guidelines. Be that as it may, in the opinion of the learned Assessing Officer, in view of the pendency of the case of the assessee with BIFR, liability has become only contingent liability and the same cannot be allowed in computing the total income.

7. It is, therefore, clear that the assessee did not conceal the fact and it is only on verification of the books of accounts of the assessee the learned Assessing Officer could take a view as to the allowability or otherwise of the particular expenses.

8. In this context, we would like to refer to the decision of the jurisdictional High Court in CIT vs. DCM Limited (2013) 359 ITR 0101 (Delhi), wherein the Hon'ble High Court of Delhi held that law does not bar or prohibit an assessee for making a claim, which he believes may be accepted or is plausible; that when such a claim is made during the course of regular or scrutiny assessment, liberal view is required to be taken as necessarily the claim is bound to be carefully scrutinized both on facts and in law; that full probe and appraisal is natural and normal; that threat of penalty cannot become a gag and/or haunt an assessee for making a claim which may be erroneous or wrong, when it is made during the course of assessment proceedings; that normally, penalty proceedings in such cases should not be initiated unless there are valid or good grounds to show that factual concealment has been made or inaccurate particulars on facts were provided in the computation. Law

does not bar or prohibit a person from making a claim, when he knows the matter is going to be examined by the Assessing Officer.

9. In CIT vs Reliance Petroproducts Pvt Ltd [2010], 322 ITR 158 Hon’ble Apex Court held that when the assessee preferred a claim, it was up to the authorities to accept its claim in the Return or not, but merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not attract the penalty under Section 271(1)(c). It was further held that if the contention of the Revenue is accepted, then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the Assessing Officer will initiate penalty under Section 271(1)(c) and that is clearly not the intention of the Legislature.

10. Penalty u/s 271(1)(c) of the Act can be imposed only when the assessee has concealed income or furnished inaccurate particulars of income. Where a deduction is claimed after making a proper disclosure, the mere fact that the disallowance has been made for a part of such deduction, it cannot be construed as a case covered u/s 271(1)(c) of the Act. The Hon'ble Supreme Court in the case of CIT Vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC) also says that no penalty can be imposed where a proper disclosure is made but the disallowance has been made by the Assessing Officer.

11. On a consideration of the material before us, we are of the considered opinion that the above decisions are applicable to the facts of the case on hand and merely because the claim preferred by the assessee was not acceptable to the learned Assessing Officer, the assessee cannot be visited with the proceedings under section 271(1)(c) of the Act, unless

and until the twin requirements under section 271(1)(c) of the Act are satisfied. We therefore, while accepting the plea of the assessee hold that the penalty cannot be sustained. We accordingly direct the assessing officer to delete the same.

12. Now coming to the specificity of charge, neither in the assessment order nor the notice issued under section 274 of the Act, there is any reference to either the concealment of income or the furnishing of inaccurate particulars thereof. In the case of *CIT vs Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar)*. Vide paragraph 60, the Hon'ble Karnataka High Court has held as follows :-

> *"60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus*

once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable."

13. In Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 taxman.com 241 (Kar) the Hon'ble Karnataka High Court Considered the question of law as to,-

"*Whether, omission if 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?*"

And the Hon'be High Court ruled answered the same in favour of the assessee observing that:

"*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. 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."

The Special Leave Petition filed by the Revenue challenging the aforesaid judgement of the High Court was dismissed by the Hon'ble Supreme Court holding :

"*We do not find any merit in this petition. The special leave petition is, accordingly, dismissed.*"

14. In PCIT vs. Sahara India Life Insurance company limited case ITA No 475/2019 and batch order dated 02/08/2019, Hon'ble Delhi High Court, upheld the view taken by the Tribunal basing on the decision of the Hon'ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra) and SSA's Emerald Meadows (supra) wherein it was held that the notice issued by the learned Assessing Officer would be bad in law if it did not specify which limb of section 271(1)(c) of the Act the penalty proceedings had been initiated under i.e., whether for concealment of particulars of income or for furnishing of inaccurate particulars thereof. Relevant observations of the Hon'ble High Court read that,-

"21. The Respondent had challenging 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 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(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 judgement 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."*

15. It is, therefore, clear that for the AO to assume jurisdiction u/s 271(1)(c), proper notice is necessary and the defect in notice u/s 274 of the Act vitiates the assumption of jurisdiction by the learned Assessing Officer to levy any penalty. In this case, facts stated supra, clearly establish that the notice issued under section 274 read with 271 of the Act is defective and, therefore, we find it difficult to hold that the learned AO rightly assumed jurisdiction to pass the order levying the penalty. Viewing from any angle, we do not find any justification to sustain the penalty, and as a consequence thereof, we direct the learned Assessing Officer to delete the penalty in question.

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

Order pronounced in the open court on this the 3rd day of November, 2021.

Sd/-	Sd/-
(N.K. BILLAIYA)	**(K. NARSIMHA CHARY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 03.11.2021
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