HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

D.B.:Hon'ble Shri P.K. Jaiswal
Hon'ble Shri S.K. Awasthi, JJ.

I.T.A. No.9 of 2018
(Principal Commissioner of Income Tax – I V/s. Kulwant Singh Bhatia)
I.T.A. No.11 of 2018
(Principal Commissioner of Income Tax – I V/s. Kulwant Singh Bhatia)
I.T.A. No.12 of 2018
(Principal Commissioner of Income Tax – I V/s. Kulwant Singh Bhatia)
I.T.A. No.13 of 2018
(Principal Commissioner of Income Tax – I V/s. Kulwant Singh Bhatia)
I.T.A. No.14 of 2018
(Principal Commissioner of Income Tax – I V/s. Kulwant Singh Bhatia)
I.T.A. No.10 of 2018
(Principal Commissioner of Income Tax – I V/s. Kulwant Singh Bhatia)

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Ms. Veena Mandlik, Advocate for the appellant.

ORDER
(Dt. 9.5.2018)

PER P.K. JAISWAL, J:-

This order shall also govern the disposal of I.T.A. No.12 of 2018, I.T.A. No.13 of 2018, I.T.A. No.14 of 2018, I.T.A. No.10 of 2018, I.T.A. No.9 of 2018, since the common question of law is involved in all these appeals, therefore, they are heard together and are being disposed of by this common order. For the sake of convenience, the facts are borrowed from I.T.A.No.11 of 2018.

2. These appeals under Section 260-A of the Income Tax Act, 1961 (hereinafter referred as 'the Act of 1961'), have been filed against the order dated 11.8.2017, passed by the Income Tax Appellate Tribunal, Bench Indore in ITA.No.414/Ind/2012 (Assessee's Appeal for the assessment year 2002-03), ITA.No.416/Ind/2012 (Assessee's Appeal for the assessment year 2004-05), ITA No.415/Ind/2012 (Assessee's Appeal for the assessment year 2003-04), ITA

No.419/Ind/2012 (Assessee's Appeal for the assessment year 2007-08), ITA No.417/Ind/2012 (Assessee's Appeal for the assessment year 2005-06) and ITA No.418/Ind/2012 (Assessee's Appeal for the assessment year 2006-07) by which the learned Tribunal was of the view that the penalty levied under Section 271(1)(c) of the Act of 1961, is not sustainable in law, as no specific charge was levied in penalty show cause notice and allowed the appeal of the assessee. While passing the impugned order, the learned Tribunal with the consent of both the sides have held that the order for the assessment year 2002-03 will equally apply for the assessment year 2003-04 to 2007-08 and accordingly, the penalties levied under Section 271(1)(c) of the Act of 1961 in all six appeal of the assessee have been allowed.

3. Brief facts related to the assessment years 2002-03 are that the assessee has filed his return of income, declaring details of income at Rs.12,48,650/-, including additional income of Rs.9,28,400/-. The assessment was completed under Section 153-A of the Act of 1961 on 18.12.2009 by accepting return income under Section 153A for the assessment year 2002-03. During course of assessment proceedings, the Assessing Officer noted that the assessee has shown additional income (Rs.9,28,400/-) due to search hence, penalty proceedings under Section 271(1)(c) of the Act of 1961 was initiated for the assessment year 2002-03. The Assessing Officer, noted that the assessee has offered an additional income of Rs.9,28,400/- in the return of income filed under Section 153A of the Act of 1961. Since the said income was not declared in the return filed under Section 139, hence, the Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act of 1961. The Assessing Officer held that after insertion of Explanation 5A of Section 271(1)(c) w.e.f. 1.6.2007, the legal position is very clear and penalty for concealed income held to be levied. Since, the assessee has declared undisclosed income only after the date of search and levied a penalty of Rs.2,48,090/- being minimum penalty at the rate of Rs.100% of the concealed income of Rs.9,28,400/- vide order dated 29.6.2010.

4. Being aggrieved with the penalty, the assesse filed an appeal before the Commissioner of Income Tax (Appeals), Indore. The learned Appellate Authority has passed an order confirming the penalty levied by the Assessing Officer on 30.4.2012. The learned Appellate Authority, while dismissing the appeal has held that the provisions of Section 27(1)(c) together with the Explanation 5A brings him liable for imposition of penalty in respect of the additional income, which has been offered following the search, that to based on unexplained deposits in the various bank accounts and FDR's as well as incriminating transaction. As per seized documents, the learned Appellate Authority dismissed all six appeals and confirmed the penalty levied by the Assessing Officer during the assessment years 2002-03 to 2007-08.

5. The respondent – assessee challenged the said order by filing separate six appeal before the Income Tax Appellate Tribunal, Indore, Bench Indore. The learned Tribunal considering the fact that these six appeals involved a common issue arising out of the same set of facts and heard together and all the six appeals are being disposed of by passing a consolidated order on 11.8.2017. The ground raised before the ITAT, was that the imposition of penalty is illegal in as much as vague and cryptic show-cause notice was issued to the assessee under Section 274 of the Act of 1961, without making him aware of the specific charge levied against him and, therefore, in view of the decision of the Karnataka High Court in the case of ***CIT*** *V/s.* ***Manjunatha Cotton Ginning Factory***, (2013) 359 ITR 565 (Kar), the penalty so imposed by the Assessing Officer deserve to be deleted.

6. The learned Tribunal relying on the decision of the Apex Court in the case of ***National Thermal Power Co. Ltd.*** *V/s.* ***CIT***, (1998) 229 ITR 383 (SC) permitted the assessee to raise the additional ground as there is pure question of law and no further inquiry or investigation on facts is required. It was submitted before the Tribunal that the income shown in the return were offered under Section 132 (4) as well as returns filed under Section 153A. These incomes have been accepted in the assessment order without any variation and objection. The blanket penalty proceedings were initiated in all cases under Section 271(1)(c). The penalty notice under Section 274 read with Section 271(1)(c) were issued in the typed format without striking off either of two charges, i.e., which is reproduced as :

> **"* have concealed the particulars of your income or............or "furnished inaccurate particulars of income".**

7. It is submitted that the show-cause notice under Section

274 is not mere empty formality but it has a definite purpose to make the assessee aware of the exact charges against him and the case, which is required to meet out. A clear notice not only a statutory requirement but even for the purpose of principle of *'audi alteram partem'* which requires that no one should be condemned unheard, a notice in clear term specifying the clear charges against an assessee is required to be given by an Assessing Officer before imposing a penalty. It was submitted that by not stricking off the inapplicable clause, the learned Assessing Officer has left the matter open for a complete guess work on the part of the appellant for presuming charges levelled against him and in such situation, it cannot be said that an effective opportunity of being heard was given to the appellant as contemplated under Section 274 of the Act of 1961. Thus, the penalty proceedings were initiated without specifying any particulars or specific charge against the assessee in either the assessment order or even the penalty notice. It is important to point out that no charge either of "concealment of income" or "furnishing of inaccurate particulars" was made in the assessment orders in all these cases. The perusal of the assessment order would show that it was stated that penalty proceedings are initiated under Section 271(1)(c) and under Section 271(AAA).

8. In the case of ***CIT*** *V/s*. ***Manjunatha Cotton Ginning Factory*** (supra), it was observed by the Karnataka High Court in para 59 that the practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initiated presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the provisions have to be held to be strictly construed, notices issued under Section 274 should satisfy the grounds, which he has to meet specifically. Otherwise, principle of natural justice is offended if the show cause notice is vague. Even in the matter of search case where penalty is levied under Explanation 5A to Section 271(1)(c), it was held by the Karnataka High Court that the show-cause notice under Section 274 was defective as it does not spelled out the ground on which the penalty is sought to be imposed and consequently penalty imposed was cancelled. The decision of ***CIT*** *V/s.* ***Manjunatha Cotton Ginning Factory*** (supra) was further followed by the Karnataka High Court in the case of ***CIT*** *V/s.* ***SSA'S Emerald Meadows***, (2016) 73 taxman.com 248 (SC) / dated 23.11.2015 (ITA 380/2015), the High Court has dismissed the appeal of the revenue by observing that the Tribunal has allowed the appeal of the assessee holding that the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Act of 1961 was bad-in-law as it did not specify which limb of Section 271(1)(c) of the Act of 1961, the penalty proceedings had been initiated, *i.e.*, whether for concealment of particulars of income or furnishing of inaccurate particulars. The Tribunal while allowing the appeal of the assessee, had relied on the decision of the Division Bench of Karnataka High Court decision in the case of ***CIT*** *V/s.* ***Manjunatha Cotton Ginning Factory*** (supra). It is further pointed out that the

SLP filed by the Deptt. before the Apex Court on 5.8.2016 in the matter of ***CIT*** *V/s.* ***SSA'S Emerald Meadows*** (supra) was dismissed. In the case of ***CIT*** *V/s.* ***Suresh Chandra Mittal***, *(2000) 251 ITR 9 (SC)*, the Apex Court has upheld the decision of M.P. High Court wherein, in similar circumstances, it was held that the initial burden lies on the revenue to establish that the assessee had concealed the income or had furnished inaccurate particulars of such income. In the present case, in show-cause notice the Assessing Officer has not specified specifically charges, there was no such mention.

9. Considering the aforesaid, the Tribunal has held that the penalty levied under Section 271(1)(c) of the Act of 1961 is not sustainable in law, as no specific charge was levied in penalty show-cause notices and allowed the appeal No.ITA (Appeal) 414/Ind/2012 and other five appeals.

10. It is submitted that the provision of Section 271(1)(c) together with Explanation 5(A) brings the assessee liable for imposition of penalty in respect of additional income, which has been offered following the search and the Assessing Officer is satisfied that it is a fit case for initiation of penalty proceedings under Section 271(1)(c) and 271(AA) of the Act of 1961. The learned Tribunal has committed an error in allowing the appeal and setting aside the well reasoned order of penalty. She also submits that the ITAT erred in not considered the satisfaction recorded by the Assessing Officer. She during the course of the arguments very specifically admitted that tax effect in this case is only Rs.2,84,090/- for the assessment year 2002-03. The total amount of penalty for the assessment year in all these appeals for the assessment years 2002-03 to 2007-08 is Rs.24,39,753 and the learned ITAT has decided all these appeals by composite order dated 11.8.2017. It is covered in para 5 of the Circular No.21 of 2015 dated 10.12.2015 and, therefore, the present appeals have been filed.

11. On due consideration of the arguments of the learned counsel for the appellant, so also considering the fact that the ground mentioned in show-cause notice would not satisfy the requirement of law, as notice was not specific, we are of the view that the learned Tribunal has rightly relying on the decision of ***CIT*** *V/s.* ***Manjunatha Cotton Ginning Factory*** (supra) and ***CIT*** *V/s.* ***SSA'S Emerald Meadows*** (supra) rightly allowed the appeal of the assessee and set aside the order of penalty imposed by the authorities. No substantial question of law is arising in these appeals. ITA.No(s).9/2018, 10/2018, 11/2018, 12/2018, 13/2018 and 14/2018, filed by the appellant have no merit and are hereby dismissed.

(P.K. JAISWAL) **JUDGE**	**(S.K. AWASTHI)** **JUDGE**

SS/-

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Shailesh Sukhdev
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HIGH COURT OF MADHYA PRADESH : INDORE BENCH

D.B.:Hon'ble Shri P.K. Jaiswal
Hon'ble Shri S.K. Awasthi, JJ.

I.T.A. No.9 of 2018
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ORDER FOR CONSIDERATION

(P.K. JAISWAL)
JUDGE
8/5/2018

HON'BLE SHRI S.K. AWASTHI, J.

I agree.

(S.K. AWASTHI)
JUDGE
8/5/2018

Post for _ 9/5/2018

(P.K. JAISWAL)
JUDGE
/5/2018

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Indore, Dated :-7.5.2018

Ms. Veena Mandlik, Advocate for the appellant.

Heard.

Reserved for orders.

(P.K. JAISWAL)
JUDGE

(S.K. AWASTHI)
JUDGE

9.5.2018

Order passed separately signed and dated.

(P.K. JAISWAL)
JUDGE

(S.K. AWASTHI)
JUDGE

SS/-