

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 1347/CHNY/2017
निर्धारण वर्ष /Assessment year : 2010-2011.

M/s. Bank of Ceylon,
20/21, Casa Major Road,
New No.2, Old No.11,
Zerart Garden II lane,
Egmore,
Chennai 600 008.

Vs. The Deputy Commissioner of
Income Tax,
International Taxation 1(1)
Chennai.

[PAN AAACB 2218C]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Dr. S. Pandiyan, IRS, Addl. CIT.

सुनवाई की तारीख/Date of Hearing : 30-05-2018
घोषणा की तारीख /Date of Pronouncement : 30-05-2018

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

Assessee in this appeal filed against an order dated
20.03.2017 of Id. Commissioner of Income Tax (Appeals)-16, Chennai,

is aggrieved on levy of penalty u/s.271(1) (c) of the Income Tax Act, 1961, (in short "the Act").

2. Ld. Counsel for the assessee submitted that assessee was challenging the validity of notice issued u/s.274 r.w.s. 271 of the Act. As per the Id. Authorised Representative, his grievance is covered by ground No.2 & 3 which is reproduced hereunder:-

2. The CIT(A) erred in confirming the levy of penalty u/s.271(1) (c) of the Act on the presumption of concealment of income or furnishing inaccurate particulars of income without assigning proper reasons and justification.

3. The CIT(A) failed to appreciate that the provisions of Section 271(1) (c) of the Act had no application to the facts of the case and ought to have appreciated that the mistakes/errors in initiating and completing the penalty proceedings would vitiate the consequential penalty order passed.

3. Ld. Counsel for the assessee submitted that the notice issued by the Id. Assessing Officer u/s.274 r.w.s.271 of the Income Tax Act, 1961 (in short "the Act") was legally flawed. According to him, the notice did not specify the reason why penalty proceeding were being initiated. As per the Id. Authorised Representative, notice did not say

whether assessee had concealed particulars of income or had furnished any inaccurate particulars of income. Contention of the Id. Authorised Representative, was that a notice which did not show the default which assessee was required to explain, was an invalid one. Reliance was placed on the judgments of Hon'ble Karnataka High Court in the case of *CIT vs. Manjunatha Cotton and Ginning Factory*, 359 ITR 565 and that of *CIT vs. SSA's Emerald Meadows (ITA No.380/2015, dated 23.11.2015)*. Id. Authorised Representative, pointed out that the judgment of Hon'ble Karnataka High Court in the case of *SSA's Emerald Meadows (supra)* stood affirmed by the Hon'ble Apex Court in CC No.11485 of 2017 dated 05.08.2016. As per the Id. Authorised Representative, Id. Commissioner of Income Tax (Appeals) while disposing of this ground raised by the assessee had erroneously taken a view that Id. Assessing Officer had correctly ticked that part of the notice which specified the offence committed by the assessee. Contention of the Id. Authorised Representative was that the notices being bad in law, levy of penalty had to be quashed.

4. On the other hand, Id DR supporting the orders of the lower authorities submitted that assessee was guilty of both furnishing of inaccurate particulars as well as concealment of income. According to her, the notice u/s.274 r.w.s. 271 of the Act did not suffer any

infirmity. As per the Id. DR, the Id. Assessing Officer had correctly desisted from marking any particular portion of such notice, since assessee was guilty of both the offences.

5. We have considered the rival contentions and perused the orders of the authorities below. Validity of a notice issued under Section 274 r.w.s. 271 of the Act goes to the root of the jurisdiction to levy a penalty under Section 271 (1) (c) of the Act and can therefore be considered at any stage of the appellate proceedings. Notice issued to the assessee under these Sections, for assessment year 2010-2011 is reproduced hereunder:-

NOTICE UNDER SECTION 274 R.W.S. 271 OF THE INCOME TAX ACT, 1961

*OFFICE OF THE DEPUTY COMMISSIONER OF INCOME-TAX,
(INTERNATIONAL TAXATION)-I, CHENNAI.
"Aayakar Bhavan" Annexe Building
121, Nungambakkam High Court (7th floor), Chennai 600 034.*

PAN: AAACB 2218C

Date: 15.03.2013.

**To
M/s Bank of Ceylon,
No.1090, Poonamallee High Road,
Chennai - 600 084.**

Sir,

Whereas in the course of proceedings before me for the Assessment Year 2010-11, it appears to me that you:-

** have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1) / 22(2) / 34 of the Indian Income Tax Act, 1922 or which you were required to furnish*

under section 139(1) or by a notice given under section 139(2) I 148 of the Income Tax Act, 1961 No..... dated..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.

**have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Income Tax Act, 1922 or under section 142(1)/143(2) of the income Tax Act, 1961,.*

** have concealed the particulars of your income orfurnished inaccurate particulars of such income.*

You are hereby requested to appear before me at 11.45 am on 08.04.2013 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 yourself of this 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 orders is made under section 271.

*(H.KABILA)
Deputy Commissioner of Income Tax-I,
InternationalTaxation.
Chennai*

Contention of the Id. DR as well as the view taken by the Id. Commissioner of Income Tax (Appeals) were that assessee was guilty of both concealment of income as well as furnishing of inaccurate particulars of income and relevant part in the notice was correctly tick marked by the Id. Assessing Officer. However, a reading of the above notice clearly show that the word used for linking the two portions is "or "and not" and". An assessee in our opinion has every right to know which alleged default he has to explain. If it is both it is necessary to mention so, in the notice. Without knowing what is default for which he is being charged, an assessee cannot give explanation. In a similar

situation Hon'ble Karnataka High Court in the case of *SSA's Emerald Meadows (supra)*, relying on its own judgment in the case of *Manjunatha Cotton and Ginning Factory (supra)* held as under at para 2 to 4 of its judgment.

"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(1)(c) is bad in law and invalid despite the amendment of Section 271(1B) 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(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 CIT 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”.

In the earlier case of *Manjunatha Cotton and Ginning Factory (supra)*

their lordship had observed as under:-

“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. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law ;

The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice are offended. On the basis of such proceedings, no penalty could be imposed on the assessee ;) taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law ; penalty proceedings are distinct from the assessment proceedings : though proceedings for imposition of penalty emanate from proceedings of assessment, they are independent and a separate aspect of the proceedings ;

The findings recorded in the assessment proceedings in so far as “concealment of income” and “furnishing of incorrect particulars” would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the proceedings on the merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared invalid in the penalty proceedings”.

View taken by the Hon’ble Karnataka High Court in the above judgment stood indirectly affirmed by the Hon’ble Apex Court, when it dismissed an SLP filed by the Revenue against the judgment in the case of SSA’s Emerald Meadows (supra), specifically observing

that there was no merits in the petition filed by the Revenue. Considering the above cited judgments, we hold that notice issued u/s.274 r.w.s. 271 of the Act, reproduced by us at para 4 not valid. Ex-consequenti, the penalty order for the impugned assessment year is set aside.

6. In the result, the appeal of the assessee is allowed on legal ground.

Order pronounced on Wednesday, the 30th day of May, 2018, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:30th May, 2018

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- | | | |
|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |