

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 534/DEL/2018 (A.Y 2004-05)  
(THROUGH VIDEO CONFERENCING)**

Pradeep Sood RRA Tax India, D-28, South Extension, Part-1, New AEZPS3313K <b>(APPELLANT)</b>	Vs	DCIT Central Circle-1 Faridabad, Haryana  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Rakesh Gupta, Adv</b>
<b>Respondent by</b>	<b>Sh. Shiv Swaroop Singh, Sr. DR</b>

<b>Date of Hearing</b>	<b>29.07.2021</b>
<b>Date of Pronouncement</b>	<b>16.08.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 30/11/2017 passed by CIT(A)-3, Gurgaon, for assessment year 2004-05.

2. The grounds of appeal are as under:-

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in upholding the action of Ld. A.O. in imposing penalty of Rs. 51,000/-, u/s 271(l)(c) and that too without assuming jurisdiction as per law and without appreciating the facts and circumstances of the case.*

2. *That in any case and in any view of the matter action of Ld.*

*CIT(A) in confirming the action of Ld. A.O in imposing penalty of Rs.51,000/- is bad in law and against the facts and circumstances of the case.*

3. Search and seizure operation was carried out at the residential premises of Shri Pradeep Sood on 16/01/2007. Shri Pradeep is a Director of M/s Ergo Auto Ltd. and is drawing salary from M/s Vee Gee Industrial Enterprises. A search and seizure operation was also conducted at the business premises of M/s Vee Gee Industrial Enterprises and Ergo Auto Ltd. on 16/1/2007. Documents inventories as Annexure-A1 to A7 were seized from residential premises on 17/1/2007. During the course of search operation Rs. 70,98,255/- as cash was received and jewellery valued at Rs. 61,30,213/- were found. Return declaring an income of Rs. 6,44,810/- was filed by the assessee on 20/09/2007. Assessment u/s 153A read with Section 143(3) of the Income Tax Act, 1961 was made on 26/12/2008 at an income of Rs. 8,40,810/-. During the course of assessment proceedings , A.O made addition of Rs. 1,70,000/- on account of undisclosed profit on sale shares and initiated penalty proceedings u/s 271(1)(c) of the Act on inaccurate particulars. The penalty of Rs. 51,000/- was imposed in respect of addition of Rs. 1,41,750/- on account of unexplained jewellery.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the notice issued under 274 read with 271(1)(c) of the Act was not proper notice as the Assessing Officer has not specified the exact limb of Section 271(1)(c). The Ld. AR further submitted that in assessment order also the addition of unexplained jewellery was not an issue before the Assessing Officer and the penalty was initiated on the afterthought which is not justifiable under the law. The Ld. AR relied upon the decision of Hon'ble High Court Reliance Petro Product, Sahara Insurance.

6. The Ld. DR relied upon the assessment order, penalty order and the order of the CIT(A). The Ld. DR submitted that in this case, addition of Rs. 1,70,000/- was made by the AO on account of undisclosed profits on sale of shares which was duly confirmed by the Ld. CIT (A). AO imposed penalty of Rs. 51,000/-. This was duly confirmed on merits by the Ld. CIT(A). Assessee is contending in additional ground of appeal that charge on penalty notice was not specified. In other words, non-striking of one limb in penalty notice does not make it valid penalty proceedings. The appellant has relied upon the decision of the Hon'ble Supreme Court in the case of Commissioner of Income-tax v. SSA'S Emerald Meadows [2016] 73 taxmann.com 248 (SC) and many other decisions. However, this contention of the assessee is not valid as it was clear from page 5 of the assessment order that penalty is being initiated for concealment of income. Penalty notice dated 7.03.2016 is not found in the paper book submitted by the assessee and assessee has raised the issue on the basis of earlier notice dated 26.12.2008. Assessee had at no earlier point of time raised the plea that on account of a defect in the notice, they were put to prejudice. It can also be seen that no prejudice per se is caused to the assessee merely because one limb of the notice is not struck off by the AO because adequate opportunity would be granted in the proceedings and also the satisfaction about the nature of the default was arrived at in the assessment proceedings itself. Assessee was well aware about the penalty provisions which are to be used against him". The Ld. DR relied upon the decision of the Hon'ble Supreme Court of India in the case of Sundaram finance Ltd.[2018] 99 taxmann.com 152(SC). The Ld. DR further submitted that there are number of judicial decisions in the favour of the revenue where it is held that the non-striking .of one limb in penalty notice does not make it invalid. The Ld. AR submitted that initiation of penalty is based on satisfaction

arrived at by the AO during assessment proceedings. For initiation of penalty, the Assessing Officer should be satisfied during the course of assessment proceedings that the assessee had concealed the particulars of its income or deliberately furnished inaccurate particulars of income. The Hon'ble Supreme Court examined this matter way back in 1962 in the case of S.V Angidi Chettiar (44 ITR 739 (SC). Through the penalty notice, the AO only informs the assessee that penalty is being initiated against him. The Ld. DR relied upon the decision in the case of Madhusudanan K. P. [2001] 118 taxmann324 (SC). The Ld. DR further submitted that no prejudice is caused to the assessee by not striking off one limb (whether the penalty is initiated on account of concealment of income or furnishing of inaccurate particulars). The Ld. DR pointed out that no prejudice *per se* is caused to the assessee merely because one limb of the notice is not struck off by the AO because adequate opportunity would be granted in the proceedings and also the satisfaction about the nature of the default was arrived at in the assessment proceedings itself. The Ld. DR relied upon the following decisions:

- ❖ Sundaram finance ltd [2018]403 II R 407, it was held by Hon'ble High Court of Madras.
- ❖ SLP against this decision was dismissed by the Hon'ble Supreme Court as reported in [2018] 99 taxmann.com 152(SC).
- ❖ Kausalya[1995] 216 ITR 600 (Bombay).
- ❖ Earthmoving Equipment Service Corporation [2017] 166 ITD 113 (Mumbai -Trib.)

The Ld. DR submitted that it is not correct on part of the assessee to raise the technical matter in appellate proceedings after having participated in the penalty proceedings without raising the issue and raising the issue for the first time in appellate proceedings. This matter was examined by ITAT, Cochin Bench also in the case

of Sinkaram Chettiar in its decision dated 02/08/2018 in I.T.A. Nos.368-373/Coch/2017. The Tribunal examined various decisions including that of Hon'ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565. The Ld. DR relied upon the decision of Chandulal (152 ITR 238), as well as the decision of the Tribunal in case of Shilov Sharrna vs. ITO, W-1(4), Noida, A.Y. 2009-10 Date of order 31.07.2017. In this ease the assessee relying upon the case of Munjunatha Cotton took additional ground that the show cause notice issued did not spell out any specific charge whether penalty proceedings were being initiated for concealment or for furnishing in accurate particulars of income (para 2 & 7). The Tribunal also relied upon the Supreme Court decision in the case of MAK Data. In view of the above case laws, facts of the case and decision of the Hon'ble Supreme Court of India in the case of Sundaram finance Ltd [2018] 119 taxmann.com 152(SC), thus, the Ld. DR requested that appeal of the assessee may be dismissed.

7. We have heard both the parties and perused the material available on record. First of all, in the notice issued u/s 274 r.w.s 271(1)(c) of the Income Tax Act, 1961, there was no specific charges as relates to concealment of income or furnishing of inaccurate particulars of income. From the notice dated 04.03.2016 produced by the Ld. AR during the hearing, it can be seen that the Assessing Officer was not sure under which limb of provisions of Section 271 of the Income Tax Act, 1961, the assessee is liable for penalty. Besides that the Assessment Order also did not specify the charge as to whether there is concealment of income or furnishing of inaccurate particulars of income in assessee's case. The notice issued u/s 271 (1)(c) read with Section 274 was not as per the prescribed provisions of penalty envisaged in Income Tax Act. This issue is squarely covered by the decision of the Hon'ble Supreme Court in case of M/s SSA' Emerald Meadow. The extract of the decision of the

Hon'ble Karnataka High Court in M/s SSA' Emerald Meadows are as under which was confirmed by the Hon'ble Apex Court:

*"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 ITA No. 4913/Del/2015 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."*

*Thus, Additional Ground No. (ii) of the assessee's appeal is allowed. Since the inception of the notice issued u/s 271(1)(c) has become null and void, there is no need to comment on merit of the case. The Penalty u/s 271(1)(c) of the Act is quashed."*

Since in the instant case also the inappropriate words in the penalty notice has not been struck off and the notice does not specify as to under which limb of the provisions, the penalty u/s 271(1)(c) has been initiated, therefore, we are of the considered opinion that the penalty levied u/s 271(1)(c) is not sustainable and has to be deleted. Although the Ld. DR submitted that mere non-striking off of the inappropriate words will not invalidate the penalty proceedings, however, the decision of the Hon'ble Karnataka High Court in the case of SSA'S Emerald Meadows (supra) where the SLP filed by the Revenue has been dismissed is directly on the issue contested herein by the Assessee. Further, when the notice is not mentioning the concealment or the furnishing of inaccurate particulars, the ratio laid down by the Hon'ble High Court in case of M/s. Sahara India Life Insurance Company Ltd. (supra) will be applicable in the present case. The Hon'ble Delhi High Court held as under:

“21. The Respondent had challenged 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 the 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 judgment 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 5<sup>th</sup> August, 2016.

22. On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises.”

On merit, the penalty was imposed on the addition which was not at all the part of the assessment order and there was no justification given by the Assessing Officer for such a new amount for imposing penalty. The addition of unexplained jewellery was not an issue before the Assessing Officer. Thus, the appeal of the assessee is allowed.

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

**Order pronounced in the Open Court on this 16<sup>th</sup> Day of August, 2021.**

**Sd/-  
( R. K. PANDA )  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated : 16/08/2021

R. Naheed \*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	29.07.2021
Date on which the typed draft is placed before the dictating Member	29.07.2021
Date on which the typed draft is placed before the Other Member	16.08.2021
Date on which the approved draft comes to the Sr. PS/PS	16.08.2021
Date on which the fair order is placed before the Dictating Member for pronouncement	16.08.2021
Date on which the fair order comes back to the Sr. PS/PS	16.08.2021
Date on which the final order is uploaded on the website of ITAT	16.08.2021
Date on which the file goes to the Bench Clerk	16.08.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	