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

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No. 6766/Del/2017
Assessment Year: 2010-11

Mayar India Limited, **3rd Floor, Sucheta Bhawan,** **11A Vishnu Digambar Marg,** **New Delhi.**	**vs.**	**DCIT, Circle 16(2),** **New Delhi.**
PAN : AAACM8246P (Appellant)		(Respondent)

Appellant by : None
Respondent by: Sh. Ramesh Kumar, Sr. DR

Date of hearing: 08/07/2021
Date of order : 23/07/2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 12/09/2017 passed by the learned Commissioner of Income Tax (Appeals)-37, New Delhi ("Ld. CIT(A)") for the assessment year 2010-11, Mayar India Limited("the assessee") filed this appeal.

2. Brief facts, as are necessary for disposal of this appeal, are that the assessee filed its return of income for A.Y. 2010-11 on 30.09.2009 declaring an income of Rs.1,23,39,670/-. The assessment u/s. 143(3) was, however, complete at an income of Rs.4,25,51,780/- by making addition

of Rs.11,32,655/- on account of disallowance u/s. 14A, Rs.13,381/- on account of non-reconciliation of ITS report, Rs.2,04,92,993/- on account of disallowance of expenditure for office renovation, Rs.50,00,000/- on account of disallowance of deduction claimed u/s. 80GGB and Rs.35,73,085/- on account of disallowance of interest. The assessee challenged the assessment order in appeal before ld. CIT(A), who confirmed the additions made. Based on these additions, the Assessing Officer initiated penalty proceedings u/s. 271(1)(c) of the Income-tax Act and imposed penalty of Rs.1,02,69,097/- by order dated 24.12.2014.

3. Aggrieved by penalty order, the assessee preferred an appeal before the ld. CIT(A), who by impugned order partly allowing the appeal, deleted the penalty based on disallowance u/s. 14A, but sustained the penalty based on remaining additions/disallowances.

4. When the matter is called, there is no representation from the assessee. Notice was sent to the address given in form No. 36. If the assessee is available in such address, such notice should have been served on the assessee. If for any reason, the assessee is not available there, it is for the assessee to make arrangements for service of such notice by furnishing the address where the assessee would be available, or to deliver it to some authorised person, or by making request to the postal department to detain the mail till the assessee claims the same. Non-service of notice is solely attributable to the conduct of assessee. In these circumstances, we proceed to decide the appeal basing on the material available on record.

A written synopsis filed by the ld. AR on 22.03.2021 is, however, available on record. In this written synopsis, challenging the validity of the penalty notice issued under section 274 read with section 271 of the Act, the ld. AR submitted that the learned Assessing Officer had omitted to specify the relevant charge that is, whether "concealment" or "inaccurate particulars" both in the assessment order and in the penalty notice thereby rendering the notice as vague. By placing 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, it is submitted that the penalty cannot be sustained.

5. Ld. DR relied on the orders of authorities below and placing 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. She therefore, prayed to dismiss the appeal.

6. We have gone through the record in the light of the submissions made by ld. DR and also a written synopsis placed on record by the ld. AR. It is an undisputed fact that the notice issued to the assessee does not specify the charge under which the penalty was proposed to be

levied by the Assessing Officer – whether for concealment of particulars of income or for furnishing inaccurate particulars of such income.

9. 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.”

10. 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?*”

11. And the Hon’be High Court 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.*”

12. 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.*"

13. 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 under 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 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.*
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> *22. On this issue again this court is unable to find any error having been committed by the ITAT."*

14. 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. As a consequence of our findings above, we direct the Assessing Officer to delete the penalty in question.

15. Even otherwise, in ground No. 4, the assessee has challenged that the ld. CIT(A), while confirming the penalty, did not consider the fact that the quantum appeal of assessee was allowed by the Tribunal. Having gone through the Tribunal order dated 22.08.2017 passed in quantum appeal No.1873/Del/2014 for the impugned assessment year, we find that major additions were deleted by Tribunal and the issue relating to addition of Rs.50,00,000/- u/s. 80GGB was remanded back to the file of Assessing Officer. For this reason too, penalty imposed cannot be sustained at this stage.

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

Order pronounced in the open court on this 23rd day of July, 2021.

Sd/-	Sd/-
(PRASHANT MAHARISHI)	**(K. NARASIMHA CHARY)**
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 23/07/2021
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