

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“T” BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 1419/Mum/2019  
(Assessment Years: 2014-15)**

M/s. Rentworks Mauritius Ltd., 49, 1 <sup>st</sup> Floor, Ashoka Shopping Centre, LT Marg. Mumbai – 400001	<b>बनाम/ Vs.</b>	ACIT (International Tax) – 4(1)(1) 17 <sup>th</sup> Floor, AIR India Building, Mumbai – 21.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGCR2210L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Kamlesh Kapadia, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri SS Iyengar, CIT-DR

सुनवाई की तारीख / Date of Hearing	17/12/2020
घोषणा की तारीख /Date of Pronouncement	23/12/2020

आदेश / ORDER

**PER PAVAN KUMAR GADALE - JM:**

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals) -58, Mumbai, passed u/s. 271(1)(c) and 250 of the Income Tax Act, 1961. The assessee has raised the grounds of appeal challenging the Notice issued u/sec 274 r.w.s 271 of the Act for levy of penalty as invalid and defective.

1.1 There is a delay in filing of the appeal. The assessee has filed application for condonation of delay along with affidavit. Considering the facts and the reasons envisaged by the Ld.AR, we find the delay is reasonable and the Ld. DR has no serious objections. Accordingly, the delay is condoned and the appeal is admitted and heard.

2. The brief facts of the case are that, the assessee is a non resident foreign company registered in Mauritius. The assessee is a tax resident of Mauritius and does not have any permanent establishment in India. The assessee company has filed the return of income on 17.11.2014 for the A.Y 2014-15 with a total income of Rs. 18,40,23,670/-. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act were issued. In compliance, the Ld. AR of the assessee appeared from time to time and submitted the information. The A.O observed that the assessee is registered as tax resident of Mauritius and tax resident certificate has been obtained. During the year under consideration the assessee has earned dividend income and capital gains on buy back of shares of M/s. Rent works (I) Pvt Ltd. and claimed as

exempt under Indo-Mauritius DTAA. Whereas, the assessee has received an amount of Rs. 32,19,657/- under the head professional fees from M/s Rent works (I) Pvt ltd., and claimed as exempt being reimbursement of expenses. But the A.O has observed that the TDS @10% of Rs. 32, 19,657/- was deducted and called for the explanations. The assessee filed the explanations referred at para 7 of the assessment order. Further, the A.O find that, the assessee has not submitted any details in respect of the professional fees and could not explain the nature of service, therefore under the provisions of DTAA, the receipts of Rs.32,19,657/-are treated as Fees for technical services(FTS) and taxed @10% and the order u/s 143(3) r.w.s 144C of the Act was passed on 22.02.2017.Subsequently, the penalty proceedings initiated u/s 271(1) (c) of the Act. The assessee has filed the submissions in the penalty proceedings explaining the nature of income. But the A.O was not satisfied with the explanations and levied penalty of Rs.3,21,966/ and passed order u/s 271(1)(c) of the Act on 11.08.2017. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A). The

assessee made submissions on the merits and validity of issue of penalty notice. Whereas the Ld.CIT(A) confirmed the order of A.O. levying penalty and dismissed the appeal. Aggrieved by the Ld.CIT(A) order, the assessee filed an appeal with the Tribunal.

3. At the time of Hearing, the learned Authorised Representative submitted that the Ld.CIT(A) has erred in not considering the facts that the Notice u/sec 274 r.w.s.271 of the Act issued by the Assessing Officer does not specify, whether the penalty is levied for concealment of particulars of income or furnishing inaccurate particulars of income. The Ld.AR supported his submissions with paper book and prayed for allowing of appeal. Contra, the learned Departmental Representative supported the orders of the CIT(A).

4. We heard the rival submissions and perused the material on record. Prima facie, the Ld.AR contentions are that the Notice u/sec 274 r.w.s.271 of the Act issued by the Assessing officer is defective, as it does not mention whether the penalty is levied for

concealment of particulars of income or furnishing inaccurate particulars of income. The Ld. AR filed the written submissions and demonstrated the copy of Notice at page 4 of the paper book. We find, the Hon'ble Apex Court dismissed the Special Leave Petition filed by the Revenue against the judgment of the Hon'ble Karnataka High Court in ITA No.380 of 2015 dated 23/11/2015 in the case of CIT vs. M/s. SSA's Emerald Meadows where an identical issue was decided in favour of the assessee. We consider it appropriate to refer to the operative part of the decision of the Hon'ble High Court of Karnataka in the case of CIT Vs. M/s. SSA's Emerald Meadows (supra) is read as under:

*"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 27.41 13) with retrospective effect and bra 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 COMMISSIONER OF INCOMETAX - 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."*

5. We are of the opinion that penalty provisions u/s 271(1)(c) of the Act are attracted, where the assessee has concealed the particulars of income or furnished inaccurate particulars of such income. It is

well accepted proposition that the aforesaid two limbs of section 271(1)(c) of the Act carry different meaning. Therefore, it was imperative for the AO to strike off irrelevant limb so as to make the assessee aware as to what is the charge made against him and so that he can respond. Further, the Hon'ble High Court of Karnataka in the case of CIT vs. Manjunatha Cotton Ginning Factory (2013) 359 ITR 565 observed that the levy of penalty has to be clear as to the limb under which it is being levied. As per the Hon'ble High Court, where the AO proposes to invoke the first limb being the concealment then, notice has to be appropriately marked. Further, the Hon'ble High Court has held that the standard proforma of notice u/s 274 of the Act, without striking of the relevant clauses would lead to inference of non-application of mind by the AO. In the present case, the learned Authorised Representative demonstrated the notice, we find that the AO is not sure whether he was to proceed on the basis that the assessee has concealed the particulars of his income or furnished inaccurate particulars of income. The Hon'ble High Court also

observed that in such a situation, the levy of penalty suffers from non-application of mind.

6. We, considering the legal position and the action of the AO in passing the penalty order u/s 271(1)(c) shows that there is non-application of mind thereby the penalty order is not sustainable and respectfully follow the decisions of the Hon'ble Supreme Court in the case of CIT VS M/s. SSA's Emerald Meadows (supra), Hon'ble High Court of Karnataka in the case CIT VS Manjunatha Cotton Ginning Factory (supra), and Hon'ble jurisdictional High Court decision ITA No 1154/Mum/2014 in CIT Vs Samson Perinchary Accordingly, we set aside the order of the Ld.CIT(A) and quash the penalty order and allow the grounds of appeal in favour of the assessee.

7. In the result, the assessee appeal is allowed.

Order pronounced in the open court on 23.12.2020

Sd/-

(PRAMOD KUMAR)  
VICE PRESIDENT

Sd/-

(PAVAN KUMAR GADALE )  
JUDICIAL MEMBER

Mumbai, Dated 23/12/2020