IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH AGRA

BEFORE SHRI A.D. JAIN, JUDICIAL MEMBER AND DR. MITHA LAL MEENA, ACCOUNTANT MEMBER

ITA No. 223 /AGR/2016
Assessment Year: 2008-09

Smt. Asha Rani Gupta, 4341-Vijay Nagar Colony, Agra	Vs.	DCIT, Circle-1, Agra
PAN: ABCPG 3945 R		

APPELLANT		RESPONDENT

Assessee by:	Shri Pankaj Gargh, Advocate
Revenue by:	Shri Waseem Arshad, Sr. D.R

Date of hearing:	08/01/2018
Date of Pronouncement:	16/01/2018

ORDER

PER, DR. MITHA LAL MEENA, AM:

The appeal, by assessee is directed against the order of the Commissioner of Income Tax, (Appeals)-1, Agra, [herein after referred to as "the CIT(A)"], dated 30.03.2016confirming the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961(in short "the Act") in respect of assessment year 2008-09 wherein the assessee has taken the following grounds:

"1 . Because the Ld. C1T(A) has wrongly, illegally and arbitrarily confirmed penalty of Rs. 52,000/~ imposed u/s 271(l)(c) of the Income Tax Act.

2. Because under the facts and circumstances of the case it cannot be said that the assessee has either concealed her income or has furnished inaccurate particulars of income. Ld. CIT(A) has legally erred in confirming the penalty.

3. Because the penalty imposed is also wrong and illegal on the ground that the initiation of penalty was for furnishing inaccurate particulars of income whereas the penalty has been imposed for concealment of income."

2. Apropos Ground No.3, the assessee objected the imposition of penalty as being wrong and illegal on the ground that the initiation of penalty was for furnishing inaccurate particulars of income whereas the penalty has been imposed for concealment of income.

3. The assessee e-filed on 30.09.2008, declaring total income at Rs.36,10,920/- and the same was processed u/s 143(1) of the Act. Assessment was completed at a total income of Rs.37,83,100/- after making addition of Rs.1,72,181/-. The CIT(A) dismissed the appeal and confirmed the addition. This addition has further been confirmed by Tribunal in ITA 22/Agra/2013. The Assessing Officer imposed the penalty of Rs. 52,000/- u/s 271(1)(c) of the Act.

4. The assessee preferred an appeal before the CIT(A) who confirmed the said penalty.

5. The ld. Counsel for the assessee has contended that on the facts and circumstances of the case and in law, the penalty order is bad in law

and without jurisdiction, hence, the same may kindly be cancelled. He further submitted that the order is bad in law because it has been passed in violation of Section 274 r.w.s. 271(1)(c) of the I.T. Act, hence, the said unlawful penalty order be cancelled.

6. The issue was raised before the ld. CIT(A) by way of Ground No.3 as under:

> *"3. Because without prejudice to the above-mentioned grounds penalty imposed is also wrong and illegal on the grounds that the penalty has been initiated for furnishing inaccurate particulars of income whereas the penalty has been imposed for concealment of income."*

7. The ld. CIT(A) has not given any finding on the legal ground rather merge the issue as under:

> *"Para 5 that all the grounds relates to only one issue of imposition of penalty of Rs.52,000/- u/s 271(1)(c) of the Act."*

8. The ld. counsel for the assessee contended that the 'concealment of particulars of income' and 'furnishing of inaccurate particulars of income' referred to in Section 271(1)(c) of the Act denote to different connotation. For this purpose, he relied upon the judgments of the Hon'ble Supreme Court in the case of Dilip N. Shroff, 161 Taxmann 218 (SC) and T. Ashok Pai, 292 ITR 11 (SC) that the aforesaid two expressions convey different connotation.

7. In CIT vs. Manju Nath Cotton and Ginning Factor 359 ITR 565 (Kar), notice u/s 274 should specifically state the ground mentioned in

Section 271(1)(c) that is whether it is for concealment of income or for furnishing of inaccurate particulars of income.

9. It is not disputed that the Assessing Officer records that the penalty proceedings u/s 271(1)(c) of the Act are initiated for concealment of income while the penalty is imposed for concealment of income.

10. Having understood that the two expressions have different connotations, we have recently decided this issue in the case of Sachin Arora vs. ITO in ITA No. 118/Agra/2015. The relevant part of the order is reproduced as under:

> *"53. From all the above, it is quite clear, that 'suppressio vari', or 'suppression of truth', which has, in section 271(1)(c) of the IT Act, as its equivalent, 'concealment of income', and 'suggestio falsi', literally, 'suggesting or stating a falsehood', which manifests itself as 'furnishing of inaccurate particulars thereof', are two distinctly separate charges; that leveling of either of these charges has to be explicitly brought to the notice/knowledge of the assessee, sans which, the assessee, under a nebulous notice containing both these charges, is rendered incapable of defending the charge per se. This would be in utter violation of the principles of natural justice, such notice being null and void ab initio. It is also pertinent to note at this juncture that the notice u/s 274 is a mandatory statutory notice without which, the initiation of penalty proceedings would be nugatory, nay, non est in the eye of the law. Therefore, the argument of the Department that where initiation of penalty in the Assessment Order, the levy in the penalty order and the confirmation of such penalty in the first appellate order are on one and the same charge, the contents of the notice u/s 274 are of no effect, the assessee having been duly apprised of the specific charge against them, is not acceptable in law. This argument has specifically been met by the Mumbai ITAT in 'Orbit 35 Enterprises vs. ITO', (supra) in ITA Nos. 1596 & 1597/Mum/2014, vide order dated 01.09.2017. Accordingly, this argument is rejected.*

> *54. Therefore, in view of the foregoing discussion, particularly following 'Manjunatha' (supra), we hold that the notices under challenge are not in conformity with the law and they are void ab initio. Accordingly, the said notices and all proceedings based thereon, culminating in the impugned orders, are quashed."*

11. In view of the foregoing discussion, we hold that the penalty order is not conformity with the law and is void ab initio. Accordingly, the penalty order is quashed.

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

Order pronounced, in the open Court on 16/01/2018.

Sd/-	Sd/-
(A. D. JAIN)	**(DR. MITHA LAL MEENA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated:16/01/2018

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

ASSISTANT REGISTRAR