

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCHE, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA Nos.136 to 141/Ind/2017  
Assessment Years:2002-03 & 2004-05 to 2008-09**

<b>Shri Gaurav Sharma Bhopal</b>	<b>बनाम/ Vs.</b>	<b>Asstt. Commissioner of Income tax 1(1), Bhopal</b>
<b>(Appellant )</b>		<b>(Respondent)</b>
<b>P.A. No.ANOPS-8611A</b>		

**Appellant by Shri B.K. Nema & Miss Megha Nema, Advocates  
Respondent by Shri K.G. Goyal**

<b>Date of hearing</b>	<b>14.05.2018</b>
<b>Date of pronouncement</b>	<b>16.05.2018</b>

**आदेश / O R D E R**

**PER BENCH**

This bunch of 6 appeals in case of the assessee pertaining to the assessment years 2002-03 & 2004-05 to 2008-09 is directed against different orders of the Commissioner of Income Tax (Appeals)-I, Bhopal, all dated

7.12.2016 arising out of different orders u/ 271(1)(c) of Income Tax Act (in short referred as 'Act') Act framed by the ACIT 1(1), Bhopal.

2. Since common issue is involved, these appeals were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. Briefly stated, the facts, as culled out from record, are that search and seizure operations were carried out u/s 132(1) of the Act on 7.9.2007 at the residential premises of the assessee. Protective assessments were made in the case of the assessee u/s 153A read with section 143(3) of the Act vide order dated 30.12.2009 whereas substantive additions were made in the hands of the assessee's father, Dr. Yogiraj Sharma. When the quantum issue came up before the Tribunal, protective addition in the hands of the assessee was confirmed as substantive addition. Subsequently, penalty proceedings were initiated u/s

271(1)(c) of the Act and notices u/s 274 r.w.s. 271(1)(c) of the Act of the Act dated 16.6.2015 were issued alleging that *“has concealed the particulars of your income or has furnished inaccurate particulars of such income”*. The Assessing Officer on the strength of the order of the Tribunal confirmed the substantive addition in the hands of the assessee and levied penalty u/s 271(1)(c) of the Act of Rs. 60,000/- for the assessment year 2002-03, Rs. 2,50,000/- for the assessment year 2004-05, Rs.8,00,000/- for the assessment year 2005-06, Rs.21,00,000/- for the assessment year 2006-07 and Rs.11,50,000/- for the assessment year 2007-08 and Rs.1,55,000/- for the assessment year 2008-09. Aggrieved, the assessee preferred appeal before the learned Commissioner of Income Tax (Appeals) but could not succeed. Now the assessee is in appeal before the Tribunal

raising following common grounds of appeal for six assessment years :-

- (i) The order imposing penalty u/s 271(1)(c) of Income tax Act 1961 is illegal, invalid and bad in law.
- (ii) The learned CIT(A) erred in confirming the penalty imposed u/s 271(1)(c) of the Income tax Act, 1961.
- (iii) The learned authorities erred in holding that penalty u/s 271(1)(c) of Income tax Act can be levied in respect to protective addition.
- (iv) The show cause notice issued u/s 271 (1)© in case of assessee is illegal, invalid and bad in law and consequent levy of penalty for the same is unjustified, unwarranted and bad in law.
- (v) Any other ground shall be prayed at the time hearing.

4. We observe that the assessee has challenged the legality of the notice u/s 274 r.w.s. 271(1)(c) of the Act and

has also challenged the findings of the learned Commissioner of Income Tax (Appeals) confirming the penalty even when the addition made by the Assessing Officer was on protective basis. We shall first take up the legal ground for the alleged notice as well as order u/s 271(1)(c) of the Act being illegal, invalid and bad in law.

5. The learned counsel for the assessee submitted written submissions as under :-

“Ground No. 4: Show Cause Notice for Initiation and Levy of Penalty u/s 271(1)(c). (P- 170 to 177) [Vol.-I]”

- A) Notice issued u/s 271(1)(c) is in printed proforma and no specific charge is specified for which penalty u/s 271(1)(c) of I.T. Act 1961 is sought to be levied.
- B) The penalty levied in respect to show cause notice which is bad in law as observed hereinabove is unsustainable.

Reliance on:

- i) (2017) 98 CCH 0039 Mum HC  
CIT vs. Samson Pernchery (P- 95 – 98)(95)[Vol.-I]
- ii) Supreme Court order Petition(s) for Special Leave to Appeal (C) ...../2016

*(CC No.11485/2016)*  
*in the case of M/s. SSA's Emerald Meadows vide*  
*order dated 05/08/2016. (P- 99) [Vol.-I]*

- i) Hon'ble High Court of Karnataka at Bengaluru order in ITA No.380 of 2015 in the case of M/s. SSA's Emerald Meadows vide order dated 23/11/2015. (P- 100 – 103)(102, 103) [Vol.-I]*
- ii) Hon'ble High Court of Hyderabad in the case of Smt. Baisetty Revathi in ITTA No.684 of 2016 vide judgement dated 13/07/2017. (P- 141 – 151) (149, 150, 151) [Vol.-I]*
- v) Hon'ble ITAT, Jaipur Bench, Jaipur in the case of Narayana Heights & Towers in ITA No.1033/JP/2016 vide order dated 20/02/2017. (P- 152 – 171) (165, 166, 168) [Vol.-I]*

Apart from the above, the learned counsel for the assessee submitted that the additions were made on protective basis. When the notices were issued for levying the penalty, the Assessing Officer was not clear as to whether it has to be levied for concealing the particulars of income or furnishing of inaccurate particulars of income and even in the penalty order also, the Assessing Officer is not clear about the limb under which the penalty is to be levied.

6. On the other hand, the learned DR vehemently argued submitting that the coordinate Bench has already held that the addition in the hands of the assessee is on substantive basis. Therefore, the penalty levied is justified. However, the ld. DR could not contradict the submissions of the assessee with regard to legality of the notice issued u/s 274 r.w.s. 271(1)(c) of the Act.

7. We have considered the rival contentions and perused the record placed before us. The common issue raised in this Bench of appeal is levying penalty u/s 271(1)(c) of the Act. In the case of the assessee search u/s 132 of the Act was carried out and substantive additions were made in the hands of the assessee's father Yogiraj Sharma. On the protective addition so made in the hands of the assessee. Penalty proceedings were initiated. The assessee could not get relief up to the first appellate authority. Before us, the assessee has raised the legal ground no. 4 alleging that the

show cause notice issued u/s 271(1)(c) of the Act is illegal and bad in law and consequently levy of penalty for the same is unjust, unwarranted and bad in law. To adjudicate this issue, we reproduce below two relevant portions of the show cause notice for the assessment year 2002-03 issued by ACIT 1(1), Bhopal, vide letter dated 16.6.2015 as under :-

*“Whereas in the course of proceedings before me for the assessment year 2002-03 it appears to me that you :-*

*Have without reasonable cause failed to furnish the return of income which you were required to furnish by a notice given under section 22(1)/(22(2)/34 of the Indian Incometax Act, 1961 or which you were required to furnish under section 139(1).*

*Have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Incometax Act, 1961 or under section 142(1)/143(2) of the Income tax Act, 1961, No....dated.*

*have concealed the particulars of your income or have furnished inaccurate particulars of such income.*

*Section 271(1)(c) of the Act(1)(c).*

*xxx xxx xxx*

8. Similar notices were also made for the assessment years 2004-05 to 2008-09. Under these notices, the reason given by the Assessing Officer is an allegation which is not specific. The Assessing Officer has alleged that either the assessee has concealed the particulars of income or has furnished inaccurate particulars of income. It is clearly visible from the notice that at the time of initiation of penalty proceedings the Assessing Officer has not made

specific satisfaction as to whether the assessee is guilty of concealing the particulars of income or furnishing inaccurate particulars of income. Similarly, when the Assessing Officer finally framed the penalty order on 31.7.2015 in para 8 of the impugned order the Assessing Officer observed that *“I am satisfied that the assessee has concealed the particulars of income or furnished inaccurate particulars of such income within the meaning of section 271(1)(c) of the Act.”* It is crystal clear that even in the penalty order the Assessing Officer is not sure about the specific charge on the assessee for which penalty has been levied. In these facts, whether the Assessing Officer was justified in levying the penalty u/s 271(1)(c) of the Act we find that the coordinate Bench of Jaipur in the case of Narayana Heights & Towers; ITA No. 1033/JP/2016 order dated 20.2.2017 adjudicated the very same issue and decided the same in favour of the assessee following the

judgment of the Hon'ble Karnataka High Court in the case of CIT vs. Manjunath Cotton & Ginning Factory; 359 ITR 565 by observing as under :-

*“3.2. We have heard the rival contention, perused the material available on record and gone through the orders of the authorities below. For the sake of clarity the relevant contents of the Assessment Order are reproduced as under: “Penalty u/s 271(1)(c) is separately as assessee has concealed the income.” Relevant contents of the Penalty Order are reproduced as under:-*

*“As the assessee had not filed any appeal against order of the AO and it appears that the assessee is satisfied with the order passed by the AO. Therefore, it appears that the assessee has nothing to say and has no objection regarding imposing the penalty u/s 271(1)(c) of I.T. Act, 1961. Therefore, I impose a penalty of equal to 100% of tax sought to be evaded on account of the above acts of the assessee of Rs. 34,05,436/- i.e. 100% tax evaded.” In the light of the above, we need to examine whether assessment order and the penalty order comply with the provisions of section 271(1)(c) of the Act. We find that on page 3 of the assessment order, the assessing order, AO observed as under:-*

*“As the assessee has concealed/furnished the inaccurate particulars of income therefore, penalty u/s 271(1)(C) is also initiated.”* 3.3. As per section 271 (1)(c), the assessing officer is empowered to impose penalty if in the course of any proceedings under this Act is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income. From the above provision it is clear that there has to be a specific satisfaction by the Assessing Officer that the assessee is guilty of concealing the particulars of his income or furnishing inaccurate particulars of such incomes. 3.4. From the above, it is clear that the assessing officer should give a specific finding. In the present case, in the assessment order as noted above the assessing officer has stated that the assessee has concealed/furnished the inaccurate particulars of income. Therefore, the penalty under Section 271(1) (c) was also initiated, from this it can not be inferred whether there is specific charge of concealing the particulars of income or furnished the inaccurate particulars of such income Law is well settled that the assessing officer has to come to a definite satisfaction whether the assessee has concealed the income of particulars or furnished the inaccurate particulars of income. The Hon’ble Karnataka High Court in the case of CIT and Another Vs. Manjunatha Cotton and Ginning

*Factory, 359 ITR 565 (Kar.) has held that the notice u/s 274 of the Act should specifically state as to whether penalty is being proposed for concealment of particulars of income or inaccurate particulars of income. In the present case notice under section 274 dated 25/3/2015 enclosed at paper book page 16 reads as under: "Penalty Notice Under Section 274, Read with Section 271 of the IT Act, 1961" Whereas in the course of proceedings before me for the Assessment Year 2012-13. It appears to me that you have:- Read With Section 271(1)(c) concealed particulars of income or furnished inaccurate particulars of income." Therefore, there is no specific charge by the Assessing Officer. Further, it is noted that the Assessing Officer in penalty order (as noted hereinabove) has proceeded on the basis of the assumption that the assessee is satisfied with the assessment order. Therefore, it appears that the assessee has nothing to say and has no objection regarding the imposing of the penalty under section 271(1)(c) of the Act. In our considered view, the assessing officer was not justified in imposing the penalty on this basis, the action of the assessing officer is contrary to the provision of law. The Id. CIT (A) without considering the binding precedents proceeded to hold that the penalty order can not be invalidated on account of any mistake or affect or omission if anywhere in*

*view of the provision of section 292B of the Act. This finding of the Ld. CIT (A) is contrary to the judgment of the Hon'ble Karnataka High Court rendered in the case of CIT and Another Vs. Manjunatha Cotton and Ginning Factory, 359 ITR 565(Kar.) (supra). The Hon'ble Karnataka High Court has held as under:- " 63. In the light of what is stated above, what emerges is as under : (a) Penalty under section 271(1)(c) is a civil liability. (b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities. (c) Willful concealment is not an essential ingredient for attracting civil liability. (d) Existence of conditions stipulated in section 271(1)(c) is a sine qua non for initiation of penalty proceedings under section 271. (e) The existence of such conditions should be discernible from the assessment order or the order of the appellate authority or the revisional authority. (f) Even if there is no specific finding regarding the existence of the conditions mentioned in section 271(1)(c), at least the facts set out in Explanation 1(A) and 1(B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision. (g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under section 271(1)(c) is a sine qua non for the Assessing Officer to initiate the*

*proceedings because of the deeming provision contained in sub-section (1B). (h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Income-tax (Appeals) and the Commissioner. (i) The imposition of penalty is not automatic. (j) The imposition of penalty even if the tax liability is admitted is not automatic. (k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by the authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the Assessing Officer in the assessment order. (l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bona fide, an order imposing penalty could be passed. (m) If the explanation offered, even though not substantiated by the assessee, but is found to be bona fide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed. (n) The direction*

*referred to in Explanation 1(B) to section 271 of the Act should be clear and without any ambiguity. (o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the assessing authority. 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 (q) Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law. (r) The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee. (s) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law. (t) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings. (u) 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 said 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 as invalid in the penalty proceedings.”*

*In the light of the above judgment we are unable to affirm the action of the authorities below. As the initiation of penalty under section 271(1)(c) vide notice 274 of the Act is not in conformity with the requirement of the law. Thus, the Penalty order can not be sustained in the eyes of the law. Same deserves to be quashed. Hence, Ground no. 1 the assessee’s appeal is allowed.”*

9. From the perusal of the above order of the Tribunal we find that the case of the assessee is squarely covered by this decision. We, therefore, in the given facts and circumstances of the case, are of the considered view that initiation of penalty proceedings by way of issuing notice u/s 274 r.w.s. 271(1)(c) of the Act do not meet the requirements as envisaged in the provisions of law and,

therefore, all the six penalty orders under consideration cannot be sustained in the eyes of law. We accordingly quash all the six penalty orders and allow this common legal ground no. 4 raised by the assessee in all these six appeals thereby deleting penalty of Rs.60,000/- for the assessment year 2002-03, Rs. 2,50,000/- for the assessment year 2004-05, Rs.8,00,000/- for the assessment year 2005-06, Rs.21,00,000/- for the assessment year 2006-07 and Rs.11,50,000/- for the assessment year 2007-08 and Rs.1,55,000/- for the assessment year 2008-09

10. Apropos other common grounds which relate to merits of the case, we find it academic to deal with the same as we have already deleted the impugned penalty u/s 271(1)(c) of the Act at Rs.60,000/- for the assessment year 2002-03, Rs. 2,50,000/- for the assessment year 2004-05, Rs.8,00,000/- for the assessment year 2005-06,

Rs.21,00,000/- for the assessment year 2006-07 and  
Rs.11,50,000/- for the assessment year 2007-08 and  
Rs.1,55,000/- for the assessment year 2008-09 and,  
therefore, the remaining grounds are dismissed as  
infructuous.

11. In the result, all the six appeals of the assessee  
stand allowed.

Pronounced in open Court on 16 May, 2018.

Sd/-

sd/-

(KUL BHARAT)  
JUDICIAL MEMBER

(MANISH BORAD)  
ACCOUNTANT MEMBER

16<sup>th</sup> May, 2018  
Dn/-

Copy to – Appellant/Respodent/Pr.CIT/CIT(A)/DR/Guard File

By order  
Private Secretary

ITA Nos. 136 to 147/Ind/2017  
Shri Gaurav Sharma