

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

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

1. ITA No. 172/Ind/2017
Assessment Year 2013-14
2. ITA No. 169/Ind/2017
Assessment Year 2013-14
3. ITA No. 170/Ind/2017
Assessment Year 2013-14
4. ITA No. 9/Ind/2017
Assessment Year 2013-14
5. ITA No. 10/Ind/2017
Assessment Year 2013-14
6. ITA No. 11/Ind/2017
Assessment Year 2013-14
7. ITA No. 12/Ind/2017
Assessment Year 2013-14

1. Shri Rajendra Mansukhani
Indore
1. Shri Suresh Lilani
Indore
3. Shri Umesh Lilani
Indore
4. Shri Gopal Maheshwari
Indore
5. Shri Pulkit Maheshwari
Indore
6. Shri Radheshyam Maheshwari
Indore
7. Shri Anurag Maheshwari
Indore

::: Appellants

Vs

Assistant Commissioner
of Income Tax (Central)-I
Indore

::: Respondent

Appellants by Shri Prakash Jain and
Smt. Shreya Jain

Respondent by Shri V.J. Boricha

| | |
|-----------------------|------------|
| Date of hearing | 02.07.2018 |
| Date of pronouncement | 26.07.2018 |

आदेश / O R D E R

PER BENCH:

These appeals by different assesseees captioned above pertaining to the assessment year 2013-14 are directed against different orders of the Commissioner of Income Tax (Appeals)-III, Indore, arising out of different assessment orders all dated 28.7.2015 passed u/s 271AAB of Income Tax Act (in short referred as 'Act') Act framed by the DCIT, Central-I, Indore.

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

3. In all these appeals, apart from the grounds raised on merits, common legal ground has been taken by all the different assessees which reads as under :-

(i) *That on the facts and in the circumstances of the case and in law the ld. CIT(A) erred in holding that penalty imposed u/s 271AAB on the basis of printed notice form without mentioning in the notice or in the assessment order that the proceedings are initiated for concealment of income or on account of furnishing inaccurate particulars of income is valid and legal.”*

4. Since the facts relating to the above issue are identical in all these appeals, we would like to dispose there appeals through this common order.

5. Brief facts, as culled out from record, are that search and seizure operation u/s 132 of the Act was carried out at the business and residential premises of the Chugh Group and other associated concerns and individuals assessee's on 21.9.2012. Unaccounted income was surrendered during the course of search under various names of individual/companies and offered to tax and the same was duly paid. Subsequently, the Assessing Officer after issuing the notice under section 274 read with section 271AAB of the Act levied penalty on the confirmed addition u/s 271(1)(c) of

the Act. On appeal, the learned Commissioner of Income Tax (Appeals) scaled down the penalty by applying the provisions of section 271AAB of the Act (which provides for 10% penalty on the surrendered income) as against the penalty levied by the Ld. AO u/s 271(1)(c) of the Act.

6. Ld. Counsel for the assessee challenging the legality of the notice issued u/s 274 read with section 271AAB of the Act, relied on various judgments Annexed in the paper book and pleaded that the impugned notices in all these seven cases are liable to be quashed, as the Ld. AO has not specified the charge on the assessee as to whether the penalty proceedings are initiated for “furnishing inaccurate particulars of income or for “concealing the particulars of income”.

7. Per contra, Ld. DR vehemently argued supporting the order of the lower authorities.

8. We have heard both the parties and perused the material available on record placed before us and carefully gone through the judgment referred and relied by both the parties. In these bunch of seven appeals relating to the penalty levied u/s 271AAB/ 271(1)(c)

of the Act, The Ld. CIT(A) has confirmed the penalties in following cases:

| Name of assessee | A.Y. | Penalty u/s 271AAB | Amount Rs. |
|-----------------------|---------|--------------------|------------|
| Rajendra Mansukhani | 2013-14 | 271AAB | 3,00,000 |
| Suresh Lilani | 2013-14 | 271AAB | 90,000 |
| Umesh Lilani | 2013-14 | 271AAB | 1,10,000 |
| Gopal Maheshwari | 2013-14 | 271AAB | 3,00,383 |
| Pulkit Maheshwari | 2013-14 | 271AAB | 92107 |
| Radheshyam Maheshwari | 2013-14 | 271AAB | 300383 |
| Anurag Maheshwari | 2013-14 | 271AAB | 307153 |

9. In all these appeals the assessee apart from challenging the quantum of penalty confirmed by Ld. CIT(A), grounds have also been taken on the legality of the notices issued notice u/s 274 r.w. section 271AAB/ 271(1)(c) of the Act. We, therefore, like to adjudicate the legal issue first.

10. We find it necessary to peruse the notice issued u/s 274 of the Act. It is not disputed at the end of both the parties that similar type of notice has been issued in all these cases. We, therefore, reproduced below the notice issued u/s 274 of the Act in the case of Rajendra Mansukhani for A.Y. 2013-14 in ITA No. 172/Ind/17:



**OFFICE OF THE
DEPUTY COMMISSIONER OF INDORE TAX (CENTRAL)-I, INDORE**
Aayakar Bhawan Main Building, Room No.122, Opp. White Church, A.B. Road, Indore

PAN: ACBPM8997M

Date: 28/01/2015

To,

Shri Rajendra Mansukhani
RH-15, Scheme No. 54,
Vijay Nagar,
Indore-452001

Sir,

**NOTICE UNDER SECTION 274 READ WITH SECTION 271AAB OF
THE INCOME TAX ACT, 1961**

Whereas in the course of proceedings before me for the assessment year 2013-14 it appears to me that you:-

*Have without reasonable cause failed to furnish me return of income with you were required to furnish by a notice given under section 22(1)/22(2)/34 of the India Income Tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income Tax Act 1961, No. dated or have without reasonable cause failed to furnish it within the allowed and the manner required by the side section 139(1) or by such notice.

*Have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the India Income Tax Act, 1922 or under section 142(1)/143(2) of the Income Tax Act 1961. No. dated

have concealed the particulars of your Income or furnished inaccurate particulars of such Income.

You are hereby requested to appear before me on 16/02/2015 at 03:30 PM and show cause why an order imposing a penalty on you should not be made under section 271AAB of the Income Tax Act 1961 if you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative you may show cause in writing on or before the side date which will be considered before any such order is made under section 271AAB.



Delete inappropriate words and paragraphs.

(Ram Kumar Yadava)
Dy. Commissioner of Income Tax (Central)-I
Indore

11. From perusal of the above notice we observe that it has been issued in the cyclostyle format without striking of one of the two charges i.e. concealment of income or furnishing of inaccurate particulars of income and it shows that the charges against the assessee for levying of penalty are not specific. It is a settled proposition of law that assessment proceedings and penalty proceedings are separate and merely on the basis that addition have been made, revenue authorities cannot levy the penalty u/s 271AAB/271(1)(c) of the Act. There are plethora of judgments wherein it has been decided that where the charge for levying the penalty is not specific in the notices issued u/s 274 of the Act, then such notice is bad in law.

12. We find that in a recent decision of the coordinate Bench Delhi dated 26.03.2018 in the case of Ravine & Associates Private Limited v. ACIT (2018) 64 (Tribunal) 149, identical issue about the validity of notice u/s 274 of the Act was adjudicated and decided in the favour of the assessee after relying on various judgments of Hon'ble Apex court and other Hon'ble High Courts observing as follows:

“11.8 We have considered the rival submissions and perused the material on record. It is evident from the notices u/s 274 r.w.s. 271 of the Act dated 27.12.2007 and 6.3.2012 that the AO has not specifically specified under which limb of section 271(1)(c) of the Act, the penalty proceedings had been initiated by him, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Hon'ble High Court of Karnataka in the case of CIT v. Manjunatha Cotton & Ginning Factory reported in 359 ITR 565 (Kar) has inter-alia held as under:

“(p) 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 inaccurate particulars of income (q) Sending printed form where all the ground mentioned in section 271 are mentioned would not satisfy requirement of law.”

11.9 The above said decision of Hon’ble High Court of Karnataka in the case of CIT v. Manjunatha Cotton & Ginning Factory (supra) has been followed by the Hon’ble High Court of Karnataka in the case of CIT v. SSA’s Emerald Meadows 73 taxmann.com 241 and the relevant portion is as under: “2. This appeal has been filed raising the following substantial questions of law: 1 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? 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 271(1B) with retrospective effect and by 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 CIT v. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565/218 Taxman 423/35 taxmann.com 250 (Kar.). 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. 11.10 The SLP filed by the revenue against the above judgment has been dismissed by Hon'ble Supreme Court of India and the decision of Hon'ble Supreme Court is reproduced here in below: "1 Delay condoned 2 We do not find any merit in this petition. The special leave petition is accordingly dismissed. 3 Pending application, if any stands disposed off." 11.11 Therefore, in the circumstances and on the facts of the present case and in light of the judgments of the Hon'ble Karnataka High Court and the Hon'ble Supreme Court reproduced hereinabove, we are of the considered view that the Assessing officer is required to specify as to 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 furnishing of inaccurate particulars of income. From the perusal of the notice u/s 274 r.w.s. 271 of the Act, Assessing officer has not specified as to under which of the two limbs the penalty is imposable. In the circumstances and facts of the case, the penalty proceedings so initiated by the AO are bad in law and accordingly the penalties so initiated are ordered to be cancelled and the order/s of the learned CIT (A) are reversed. Thus, the legal ground raised is decided in favour of the assessee and is allowed."

13. We also find that the Hon'ble jurisdictional High Court in the case of CIT vs. Agrawal Construction Co. (2018) 32 ITJ 724 (MP) adjudicating very same issue upheld the finding of the Tribunal observing that, "in the absence of any such finding in respect of inaccurate particulars of income, further proceedings imposing the penalty against the respondent could not have been initiated by the authority concern and the authorities are required to record, a subjective satisfaction for initiating penalty proceedings".

14. We therefore, respectfully following the above quoted judgments and decisions, are of the considered view that the impugned notices u/s 274 of the Act are bad in law as the specific charge against the assessee has not been specified in these notices and therefore, liable to be quashed. There remains no requirements to adjudicate the issues which have cropped up after the issuance of penalty notices as the very foundation of the penalty order are bad in law. We, accordingly allow the legal issue in all the seven appeals of the assessee and delete the penalty confirmed by the Ld. CIT(A) u/s 271AAB of the Act in all the instant seven appeals.

15. In the result, all the seven appeals filed by different Assesseees are allowed.

Order was pronounced in the open court on 26 .07.2018.

Sd/-

(KUL BHARAT)

JUDICIAL MEMBER

Sd/-

(MANISH BORAD)

ACCOUNTANT MEMBER

Indore; दिनांक Dated : 26/ 07/2018

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Private Secretary/DDO, Indore