

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.570/LKW/2018
A.Y. 2012-13

M/s J.S. Tower, 16/80-I, Civil Lines, Kanpur PAN AADFJ5437B (Appellant)	Vs.	ACIT-I, Kanpur (Respondent)
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Appellant by	Shri Sworn Singh, FCA
Respondent by	Shri C.K. Singh, DR
Date of hearing	01/03/2019
Date of pronouncement	01/03/2019

ORDER

PER: A.D. JAIN, VICE PRESIDENT:

This is assessee's appeal for Assessment Year 2012-13, against the order of the Id. CIT(A)-I, Kanpur dated 20.06.2018, taking the following ground:

- "1. *That the Ld. C.I.T. (Appeals)-I Kanpur has erred in law and on facts in sustaining the Penalty imposed under section 271(1)(c) of the Income Tax Act, 1961, even when the Ld. A.O. not mentioned the specific charge in the Show Cause Notice issued u/s 274 r/w section 271(l)(c) of the Income Tax Act, 1961.*

2. *That the Ld. C.I.T. (Appeals)-I Kanpur has erred in law and on facts in sustaining the Penalty when the Ld. A.O. was not sure on which limb of charge he levied penalty u/s 271(l)(c) of the Income Tax Act, 1961, therefore, the penalty levied deserves to be deleted.*
3. *That the Ld. C.I.T. (Appeals)-I Kanpur has erred in law and on facts in sustaining the penalty imposed by the Ld. A.O. and invocation of Explanation 1 to Section 271(l)(c) of the Income Tax Act, 1961 while levying penalty on charge of furnishing inaccurate particulars of income and concealment of such income, therefore, the impugned penalty order is unsustainable in law and deserves to be deleted,*
4. *That the Ld. C.I.T. (Appeals)-I Kanpur has erred in law and on facts in sustaining the penalty levied by the A.O. amounting to Rs.1,00,000/- on account of alleged furnishing of inaccurate particulars and concealment of income u/s 271(l)(c) of the Income Tax act, 1961, in respect of disallowance of deduction of Rs.2,80,420/- claimed by the appellant on account of Stamp Duty on lease agreement from actual rent received.*
5. *That the Ld. C.I.T. (Appeals)-I Kanpur has erred in law and on facts in sustaining the penalty levied by the A.O. is arbitrary, unwarranted, unjustified and unsustainable in law and on facts therefore, deserves to be deleted.*
6. *That the Order of the Ld. C.I.T.(Appeals)-I, Kanpur sustaining the impugned Penalty Order passed by the A.O. is contrary' to the principles of natural justice and equity as it is passed in an Ex-parte manner without even examining the assessment records/Books of Account.*
7. *That the Ld. C.I.T, (Appeals)-I Kanpur has erred in law and on facts in sustaining the impugned penalty order which was passed by the Ld. A,O. was without first assuming lawful jurisdiction, hence the penalty*

proceedings are void-ab-initio and the impugned Penalty Order deserves to be quashed.”

2. The grievance of the assessee is against imposition of penalty under section 271(1)(c) of the I.T. Act, which has been confirmed by the Id. CIT(A).

3. At the time of hearing before us, the Id. A.R. of the assessee invited our attention to the show cause notice for penalty under section 271(1)(c) of the Act. It was submitted that from a perusal of this notice, it is crystal clear that the charge for which the penalty is proposed to be levied under section 271(1)(c) of the Act is not specific, as to whether it is for concealment of income or for furnishing of inaccurate particulars of income. The Id. A.R. of the assessee vehemently argued that it is a settled position of law that if the notice under section 274 is not specific about the charge or limb under which penalty is being levied under section 271(1)(c) of the Act, any penalty levied on the basis of such a notice is bad in law and it is liable to be cancelled.

4. The Id. D.R., on the other hand, relied on the orders of the authorities below.

5. Heard. The show cause notice in question is as follows:

OFFICE OF THE
DY. COMMISSIONER OF INCOME TAX-1
AAYAKAR BHAWAN, 16/69, CIVIL LINES,
KANPUR

ITNS-167
DATED: 31.12.2014

To _____

M/s J.S.Tower,
16/80-I, Civil Lines
Kanpur 20800.1

Whereas in the course of proceedings before me for the assessment year 2012-13 it appears to me that you: -

* have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian 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 time allowed and the manner required by the said 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 Indian Income-tax Act, 1922 or under section 142(1)/143(2) of the Income-tax Act, 1961.



No. _____, dated _____.

_____ have concealed the particulars of its income & or furnished inaccurate particulars of such income.

You are hereby requested to appear before me at 11.00 A.M. on 29/01/2015 and show cause why an order imposing a penalty on you should not be made under section 271 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 said date which will be considered before any such order is made under section 271(1)(c) of the I.T. Act, 1961.

(Seal)


 (JYOTSANA DEVI)
 DY. COMMISSIONER OF INCOME TAX-1
 Dy. Commissioner of Income Tax,
 Kanpur

From a perusal of this notice, it is crystal clear that the charge for which penalty is proposed to be levied under section 271(1)(c) of the

Act, whether for concealment of income, or for furnishing of inaccurate particulars of income, is not specific. The law mandates that the authority who is proposing to impose penalty shall be certain as to the basis on which the penalty is being levied and the notice must reflect that specific reason, so that the assessee, to whom such notice is given, can prepare himself regarding the defence which he would like to take to support his case. This is even enshrined in the principles of natural justice and as has been upheld by Hon'ble Apex Court and other High Courts. We place reliance on the following cases:-

1. *'CIT vs. SSA's Emerald Meadows', [2016] 73 Taxmann.com 248 (SC). In this case the Hon'ble Apex Court looked into the facts before them that Tribunal relying on the decision of Division Bench of Hon'ble Karnataka High Court in the case of CIT and Another vs. Manjunath Cotton & Ginning Factory (supra) allowed the appeal of the assessee holding that notice issued by the Assessing Officer under section 274 read with section 271(1)(c) of the Act was bad in law as it did not specify under which limb of 271(1)(c) penalty proceedings has been initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income. When the matter travelled upto the High Court, it supported the judgment of Hon'ble Karnataka High Court in the case of CIT and Another vs. Manjunath Cotton & Ginning Factory (supra) and decided that there was therefore no*

substantial question of law to be decided. Thereafter an SLP was filed before the Hon'ble Apex Court and the Apex Court dismissed the SLP of the Revenue finding no merit therein and confirming the issue in favour of the assessee.

2. *'CIT and Another vs. Manjunath Cotton & Ginning Factory', [2013] 359 ITR 565 (Karn.). In this case, it has been held by the Hon'ble High Court that notice under section 274 read with section 271(1)(c) of the Act should specifically state the grounds mentioned in 271(1)(c) i.e. whether it is for concealment of income or for furnishing of inaccurate particulars of income. Sending printed form where all the grounds mentioned would not satisfy the requirement of law. 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. Penalty proceedings are distinct from assessment proceedings though it emanates from the assessment proceedings still it is separate and independent proceedings all together.*
3. *'Meherjee Cassinath Holdings Pvt. Ltd vs. ACIT (ITAT Mumbai)', ITA NO. 2555/MUM/2012, order dated 28/04/2017 wherein the observation of the Bench was that penalty proceedings under section 271(1)(c) of the Act are "quasi-criminal" proceedings and ought to comply with the principles of natural justice. The non-striking of the irrelevant portion in the show-cause notice means that the Assessing Officer is not firm about the charge against the assessee and the assessee is not made aware as to which of the two limbs of s. 271(1)(c) he has to respond.*

4. *'Chandra Prakash Bubna vs. Income Tax Officer, Ward 27(3), Kolkata', (ITAT Kolkata Bench) [2015] 64 taxmann.com 155 wherein it was held that when the Assessing Officer levied penalty without bringing out any specific charge for which penalty had been imposed, penalty was liable to be deleted.*
5. *'Sachin Arora vs. ITO' and other cases, order dated 19.12.2017 passed by the Agra Bench of the Tribunal in ITA No.118/Agra/2015 etc.*

6. The settled legal position on the issue, as enshrined in the aforesaid cases, is apparent and we arrive at the considered view that the show cause notice, which has not specified the charge and limb under which the penalty is proposed to be levied, is void ab initio and the consequent penalty imposed on the basis of such notice is, therefore, illegal and bad in law and liable to be deleted. We, therefore, direct deletion of the penalty.

7. In the result, the appeal is allowed.

(Order pronounced in the open court on 01/03/2019)

Sd/-
T.S. Kapoor
Accountant Member

Sd/-
(A.D. Jain)
Vice President

Aks -
Dtd. 01/03/2019

Copy of order forwarded to:

(1) The appellant

(3) Commissioner

(5) Departmental Representative

(2) The respondent

(4) CIT(A)

(6) Guard File

By order

Assistant Registrar