

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'B', LUCKNOW**

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

ITA No.361/Lkw/2018
Assessment Year:2013-2014

Shri Ramesh Chandra Pathak, 1/476, Awas Vikas No. 3, Ambedkarpuram, Kanpur. PAN:AIDPP 9972 F (Appellant)	Vs.	Income Tax Officer-4(1), Kanpur. (Respondent)
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Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri C. K. Singh, D.R.
Date of hearing	16/07/2019
Date of pronouncement	19/07/2019

ORDER

PER T. S. KAPOOR, A.M.

This is an appeal filed by assessee against the order of learned CIT(A)-I, Kanpur dated 26/09/2017 pertaining to assessment year 2013-2014. In this appeal the assessee has raised the following grounds:

"1. *Because the CIT(A) has erred on facts and in law in upholding the levy of penalty of Rs.40,000/- under section 27(1)(c) of the IT. Act, 1961, which penalty is bad in law and be deleted.*

2. *Because there being neither any concealment of particulars of income nor furnishing of inaccurate particulars of income, the CIT(A) has erred on facts and in law in upholding the levy of penalty of Rs.40,000/- under section 271(1)(c) of the IT. Act, 1961.*

3. *Because the CIT(A) has failed to appreciate the explanation furnished before the Assessing Officer as well as the written submissions filed before him and has arbitrarily held, that the assessee is liable for penalty under section 271(1)(c) of the Act.*

4. *Because the explanation furnished by the assessee has not been found to be false nor untrue, the penalty imposed under section 271(1)(c) of the Act is bad in law and be deleted.*

5. *Because the assessee was prevented by sufficient and reasonable cause being under a bonafide belief totally depending upon the person filing the income-tax return, the CIT(A) has failed to appreciate the facts and circumstances of the case, the levy of penalty of Rs.40,000/- under section 271(1)(c) is bad in law and be deleted.*

6. *Because there being no satisfaction for intimation of penalty proceedings nor there being any specific charge, the penalty of Rs. 40,000/- imposed us/ 271(1)(c) is bad in law and be quashed."*

2. At the outset, Learned A. R. invited our attention to additional ground of appeal which was filed by the assessee on 15/07/2019 and it was argued that since the ground of appeal taken by the assessee is coming out from the facts on record therefore, the same should be admitted. Reliance in this respect was placed on the judgment of Hon'ble Supreme Court in the case of NTPC Limited vs. CIT 229 ITR 383 (SC) and also Gauhati High Court in the case of Assam Co. India Ltd. 256 ITR 423. The additional ground of appeal taken by the assessee reads as under:

"Because charge being not specific for initiation of penalty in the notice issued u/s 274 read with section 271(1)(c) of I.T. Act, the penalty imposed is bad in law and be quashed."

2.1 Learned D. R. had no objection to the admission of additional ground and the ground coming out from the facts of record, the same was admitted and assessee was asked to proceed with his arguments.

3. At the time of hearing before us, the learned A.R. of the assessee invited our attention to the paper book filed wherein show cause notice for penalty under section 274 read with 271(1)(c) of the Act was placed. It was submitted that from a perusal of this notice, it is crystal clear that the charge is not specific for which penalty is levied under section 271(1)(c) of the Act, whether for concealment of income or for furnishing of inaccurate particulars of income. The learned A.R. of the assessee vehemently argued that it is settled position of law that if notice under section 274 read with 271(1)(c) is not specific about the charge or limb under which penalty is being levied under section 271(1)(c) of the Act, then any penalty levied on the basis of such notice is bad in law and liable to be deleted. Learned counsel for the assessee placed reliance on the order of this Bench of the Tribunal in I.T.A. No.570/Lkw/2018 in the case of J. S. Tower vs ACIT, I.T.A. No.548/Lkw/2017 in the case of Taneja Rice & Dall Mills vs. ACIT and I.T.A. No.486/Lkw/2016 in the case of Pankaj Kumar Gupta vs. Income Tax Officer.

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

5. We have perused the case records and heard the rival contentions and as apparent from notice under section 274 read with 271(1)(c) of the Act, we find that the charge on which penalty is levied is not specific. The copy of show cause notice has been made part of this order, which is as under:

OFFICE OF THE
INCOME TAX OFFICER 4 (1)
15/295-A, 'VAIBHAV BUILDING'
CIVIL LINES, KANPUR.

F.No. ITO4(1)/KNP/271(1)(C)/2015-16/

Dated:22.01.2016

To,

Shri Ramesh Chan dra Pathak
1/476 Awas Vikas No.3
Ambedkerpuram Kalyanpur
Kanpur-208017

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.~~

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

You are hereby requested to appear before me at **11:00 A.M. on.09-02-2016** and show cause why an order imposing a penalty on you should not be made under section 271(1)(c) 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).

Seal



(Munawer Hasan)
Income Tax officer 4(1)
Kanpur.

(मुनव्वर हसन)
आयकर अधिकारी-4 (1)
कानपुर

From a perusal of this notice, it is crystal clear that the charge is not specific for which penalty is levied under section 271(1)(c) of the Act, whether for concealment of income or for furnishing of inaccurate particulars of income. The notice has specified both charges i.e. concealment of income and

furnishing of inaccurate particulars of income and has not specified the charge for which action has been taken against assessee. The non specific nature of notice indicates non application of mind by Assessing Officer. It is a settled position of law that if notice under section 274 read with 271(1)(c) is not specific about the charge or limb under which penalty is being levied under section 271(1)(c) of the Act, then any penalty levied on the basis of such notice is bad in law and liable to be deleted.

6. The law mandates that the authority, who is proposing to impose penalty, shall be certain as to what basis penalty is being levied and notice must reflect that specific reason so that assessee, to whom such notice is given, can well prepare himself regarding defence, which he likes 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. I would like to rely 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 clearly mentioned and 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.

7. The settled legal position on the issue, as enshrined in the aforesaid cases, is apparent and we arrive at the considered view that notice under section 274 read with 271(1)(c) of the Act, which has not specified the charge and limb under which penalty should be levied, it is void ab initio and any 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 penalty.

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

(Order pronounced in the open court on 19/07/2019)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:19/07/2019

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar