

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

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

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

**ITA No.513/Ind/2018
Assessment Year: 2011-12**

DCIT, Circle- Itarsi	बनाम/ Vs.	Shri Amit Kumar Agrawal C/o Prop. M/s Ashirwad Jewellers, Sarafa Bazar, Hoshangabad
(Revenut)		(Respondent)
PAN:ADSPA1284H		

**CO No.28/Ind/2019
(Arising out of ITA No.513/Ind/2018)
Assessment Year: 2011-12**

Shri Amit Kumar Agrawal C/o Prop. M/s Ashirwad Jewellers, Sarafa Bazar, Hoshangabad	बनाम/ Vs.	DCIT, Circle-Itarsi
(Appellant)		(Revenue)
PAN:ADSPA1284H		
Appellantby	Shri Prakash Jain CA	
Revenue by	Shri Amit Kumar Soni, Sr. DR	
Date of Hearing:	17.07.2019	
Date of Pronouncement:	31.07.2019	

आदेश / O R D E R

PER MANISH BORAD, A.M:

The above captioned appeal filed at the instance of Revenue and the Cross Objection has been filed by the assessee for A.Y. 2011-12 are directed against the order of Ld. Commissioner of Income Tax(Appeals)-1, Bhopal, (in short 'CIT(A)'), dated 27.03.2018 which are arising out of the order u/s 271(1)(c) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 27.08.2014 by DCIT-(Central)-1(1), Bhopal.

2. The revenue has raised following grounds of appeal:

"1. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty u/s 271(1)(c) of Rs.34,00,000/- ignoring the decision of the Apex Court in the case of MAK Data Pvt. Ltd. vs. CIT (2013) 358 ITR 593 (Hon'ble Supreme Court) dated 30.10.2013.

2. Whether on the facts and circumstances of the case³, the Ld. CIT(A) has erred in deleting the penalty u/s 271(1)(c) of the Act Rs.34,00,000/- ignoring the decision of the Hon'ble High Court Delhi in the case of Pr. CIT-21 vs. Dr. Vandana Gupta in ITANo.218/2017 dated 20.02.2018."

3. In its Cross Objection the assessee has raised the following grounds:

"1. On the facts and in the circumstances of the case the Ld AO erred in law and fact by levying penalty u/s 271(1)(c)."

The above ground was taken by the assessee as neither in the assessment order not in the penalty order it is specified by the Ld. AO that penalty u/s 271(1)(c) is leviable for concealment of income for furnishing of inaccurate particular of income.

Tax Effect of Rs.34,00,000/-

4. We will first take the Cross objection in CO No.28/Ind/2019 filed by the assessee raising a legal issue challenging the legality of the proceedings carried out u/s 271(1)(c) of the Act.

5. Brief facts as culled out from the records are that the assessee is an individual, carrying business of gold, silver and diamond jewellery under the name of M/s Ashirwad Jeweller. A survey u/s 133A of the Act was conducted on 26.10.2010. Surrender toward excess stock and excess cash, totalling to Rs.1,08,00,736/- was made during the course of survey. The same was declared as undisclosed income in the income tax return filed on 25.09.2011. Assessment u/s 143(3) of the Act was completed on 28.02.2014, accepting the income shown by the assessee at Rs.1,23,17,140/-. Learned Assessing Officer (in short Ld. AO) initiated penalty proceedings u/s 271(1)(c) of the Act for the amount accepted as undisclosed income. Thereafter, notice u/s 274 r.w.s 271(1)(c) of the Act was issued on 28.02.2014 but the Ld. AO failed to levy the specific charge in the notice against the assessee. Penalty order was framed on 27.08.2014 levying penalty of Rs.34,00,000/-.

6. Aggrieved against the order of Ld. AO levying penalty u/s 271(1)(c) of the Act, appeal was preferred before the Ld. CIT(A) and the Ld. CIT(A) deleted the penalty observing that the survey was conducted before the due date for filing the return of income for F.Y. 2010-11 and the assessee has offered undisclosed income in the income tax return filed subsequent to the date of survey and paid the due taxes thereon. Therefore, the assessing officer was not justified in treating the assessee being guilty of concealing of income or furnishing inaccurate particulars of income.

7. Now the assessee is in appeal before the Tribunal.

8. At the outset, Ld. counsel for the assessee relying on the judgment of Hon'ble Supreme court in the case of National Thermal Power Co. Ltd. vs Commissioner Of Income Tax 229 ITR 383(SC) raised the legal issue for the first time before us, submitting that the alleged notice issued by the Ld. AO u/s 274 r.w.s 271(1)(c) of the Act is laible to be quashed, as it has been issued without specifying the charge against the assessee as to whether the assessee has concealed the particulars of income or furnishing in accurate particulars of income.

9. In support of this contention reliance was placed on the judgment of Jurisdictional High Court in the case of PCIT Vs Kulwant Singh Bhatia 33 ITJ 777 (MP).

10. On the other hand Departmental Representative (Ld. DR) supported the order of the Ld. AO contending that the penalty has been rightly levied on the assessee.

11. We have heard rival contentions and perused the record placed before us. The revenue is aggrieved with the deletion of penalty u/s 271(1)(c) of the Act at Rs.34,00,000/- by the Ld. CIT(A) which was levied by the Ld. AO on the undisclosed income surrendered by the assessee during the course of survey but subsequently offered to tax in the income tax return. There is no dispute to this fact that survey was carried out on 26.10.2010 i.e. during F.Y. 2010-11. Due

date for filing of the return of income for A.Y. 2011-12 was on 30th September 2011. The assessee filed the return on 25.09.2011 duly incorporating the surrendered income and paid taxes thereon. The assessing officer initiated the penalty proceedings on the undisclosed income offered to tax in income tax return.

12. During the course of hearing Ld. counsel for the assessee referring to the grounds in cross objection raised a legal issue contending that the notice u/s 274 of the Act is invalid and suffered from infirmity. This issue has been raised for the first time before the Tribunal. However, we are bound to admit this legal ground, in view of judgment of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs Commissioner Of Income Tax(supra) wherein Hon'ble Supreme Court held that *“the Tribunal has jurisdiction to examine the question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee”*.

13. In order to adjudicate the legal issue challenging the legality of the notice issued u/s 274 r.w.s. 271(1)(c) of the Act we reproduce below the copy of notice dated 28.02.2014:

OFFICE OF THE

Deputy Commissioner of Income Tax- 1(1)
AayakarBhawan, Hoshangabad Road, Bhopal

PENALTY NOTICE UNDER SECTION 271(1)(c) OF INCOME TAX ACT, 1961

Bhopal Dated 128/02/2014

PAN ADSPA1284H

To

Shri Amit, Agrawal,
Pro. M/s Ashirwad Jewellers,
Sarafa Bazar, Hoshangabad

Sir/Madam

Sub:- Penalty proceedings u/s 271(1)(c) of the Income Tax Act
1961 for the ASSESSMENT YEAR 2011-12

In connection with the penalty proceedings u/s 271(1)(c) for the assessment year(s) 2011-12 you are requested to attend my office on or before 15/04/2014 at 11.00 AM to show cause why penalty should not be imposed. However, if you do not wish to be heard in person in this regard, you may submit your written submissions so as to reach me by the above date which will be considered before disposal of the matter.

Sd/-

(Poonam Rai)

Deputy Commissioner of Income Tax, range-1(1), Bhopal

14. From going through the above notice we find that the assessing officer has issued the notice without specifying the charge against the assessee as required as per the provisions of section 271(1)(c) of the Act which provides that the penalty may be levied on the assessee if the assessee conceals the particulars of income or furnishes inaccurate particulars of income. In the above notice both the limbs/charge are missing. Similar set of facts and issue came up for adjudication before the Jurisdictional High Court in the case of Kulwant Singh Bhatia (Supra) wherein jurisdictional High Court after considering the judgment of Hon'ble High Court of Karnataka in the case of CIT vs. Manjunatha Ginning Factory, 359 ITR 565 (Kar) and CIT V/s SSA's Emerald Meadows ITA 380/2015 dated 23.11.2015 held that *"on due consideration of the arguments of the Ld. counsel for the appellant, so also considering the fact that the ground*

mentioned in show cause notice would not specify the requirement of law, as notice was not specific, we are of the view that Ld. Tribunal has rightly allowed the appeal of the assessee and set aside the order of penalty enforced by the authority”.

15. The above stated judgment of Hon'ble High Court was also followed by us adjudicating similar facts and the issue in the case of Vijay Hariramani in ITANo.161/Ind/2018 dated 16.05.2019.

16. We, therefore, in the given facts and circumstances of the case and in the light of the ratio laid down by the Hon'ble Jurisdictional High Court in the case of Kulwant Singh Bhatia (supra), are of the considered view that the impugned notice u/s 274 r.w.s. 271(1)(c) of the Act issued by the Ld. AO on 28.02.2018 is invalid, untenable and suffers from the infirmity of non application of mind by the Ld. AO as no specific charge has been leveled against the assessee as required by Section 271(1)(c) of the Act. Since notice u/s 274 of the Act is held by us to be invalid subsequent proceedings carried out u/s 271(1)(c) of the Act are held to be *void ab initio*. We, accordingly allow the sole legal ground raised in the cross objection by the assessee.

17. Apropos the Revenue's appeal challenging the quantum of penalty deleted by the Ld. CIT(A), we are of the view that since we have already allowed legal ground raised by the assessee, and deleted the levy of penalty u/s 271(1)(c) of the Act at Rs.34,00,000/- adjudication of the issue on merit raised by revenue

will be merely academic in nature and therefore, revenue's grounds are dismissed as infructuous.

18. In the result, legal ground raised in Cross Objection by the assessee is allowed and the appeal of the revenue is dismissed.

Order was pronounced in the open court on 31.07.2019.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 31 /07/2019

Patel. P. S./नि.स.

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

By order
Assistant Registrar