

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

**Before Shri L.P Sahu, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 734/Asr./2017
(Assessment Year: 2004-05)**

Shri Pardeep Kumar Sareen
C/o. Prem Ashram High
School, Beri Gate,
Amritsar.

Vs.

The Income-tax Officer
Ward 3(3),
Amritsar.

PAN – ABSPS3710N

(Appellant)

(Respondent)

Appellant by: Shri Milkhi Ram on behalf of
Sh. Padam Bahl C.A.

Respondent by: Shri Charan Dass, D.R.

Date of Hearing: 05.02.2020

Date of Pronouncement: 06.02.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-1, Amritsar, dated 06.09.2017, which in turn arises from the order passed by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 (for short 'I.T. Act'), dated 25.01.2016 for Assessment Year 2004-05. The assessee has assailed the order of the CIT(A) on the following grounds of appeal before us:

- “1. That the learned Commissioner of Income-tax (Appeals)-1, Amritsar has grossly erred in confirming the penalty u/s 271(1)(c) levied by the Assessing Officer on income of Rs. 1,17,479/-.
2. That the learned Commissioner of Income-tax (Appeals)-1, Amritsar has failed to appreciate that the Assessing officer had levied the penalty on addition of bonafide explanation.

3. That the learned Commissioner of Income tax (Appeals)-1, Amritsar has failed to appreciate that the source of all deposits in the bank stood fully explained and there was no difference of Rs. 1,17,479/-.”

Further, the assessee has raised the following additional grounds of appeal before us:

- “1. That the penalty order u/s 271(1)(c) dated 25.01.2016 passed by the Assessing officer with the approval of Additional Commissioner of Income Tax, Range III, dated 08.03.2016 is illegal.
2. That no proper satisfaction was recorded by the learned Assessing Officer in the Assessment order or in the notice U/s 271(1)(c) read with Section 274 of the Income-tax Act, 1961 as no correct charge has been made against the assessee.”

As the assessee by raising the additional grounds of appeal has sought adjudication of a legal issue based on the facts borne from the records, therefore, relying on the judgment of the Hon’ble Supreme Court in the case of National Thermal Power Company Limited Vs. CIT (1998) 229 ITR 383 (SC), we admit the same.

4. Briefly stated, the facts of the case are that the assessee had filed his return of income for A.Y 2004-05 on 18.03.2005, declaring a total income of Rs. 1,28,150/-. The return of income filed by the assessee was initially processed u/s 143(1) of the I.T. Act. Subsequently, the case was selected for scrutiny assessment u/s 143(2) of the I.T Act. On the basis of assessment framed u/s 143(3), dated 28.12.2010 the A.O made an addition of Rs. 4,94,415/- on account of ‘Unexplained investment’ in the hands of the assessee. Also, an addition of perquisite of rent free accommodation of Rs. 16,745/- was made in the hands of the assessee. The A.O while framing the assessment also initiated penalty proceedings u/s 271(1)(c) in the body of the assessment order.

6. Aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A), who vide his order dated 30.01.2015 confirmed an addition of Rs. 2,49,415/- (out of addition of Rs. 4,94,415/-).

7. The Assessing Officer after receiving the order of the CIT(A) called upon the assessee to show cause as to why penalty u/s 271(1)(c) of the I.T Act may not be imposed on him. In reply, the assessee tried to impress upon the Assessing Officer that no penalty u/s 271 (1) (c) of the Act was liable to be imposed on him. However, the Assessing Officer not being persuaded to accept the explanation of the assessee imposed a penalty u/s 271(1)(c) of Rs. 74,310/- for concealment of income.

8. Aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A). The CIT(A) after deliberating at length on the contentions advanced by the assessee confined the penalty u/s 271(1)(c) on an addition of Rs, 1,17,479/-.

9. The assessee being aggrieved with the order of the CIT(A) to the extent he had upheld the penalty imposed by the Assessing Officer u/s 271(1)(c) of the I.T Act has carried the matter in appeal before us. It is the claim of the assessee that as the Assessing Officer had failed to strike off the irrelevant default in the "Show Cause" notice (herein referred to as 'SCN'), dated 28.12.2010 issued u/s 274 r.w.s 271, therefore, the penalty which was thereafter imposed by him u/s 271(1)(c) of the I.T. Act cannot be sustained and is liable to be vacated. In order to drive home his aforesaid claim a copy of the 'SCN', dated 28.12.2010 had been placed on our record.

10. Per contra, the Ld. Departmental Representative (for short 'D.R') relied upon the orders of the lower authorities. It was submitted by the Ld. D.R that as the assessee was afforded sufficient opportunity in the course of penalty proceedings, thus, it was incorrect on his part to claim that no opportunity of being heard was afforded to him. In order to buttress his contention that the A.O had validly imposed penalty u/s 271(1)(c) on the

assessee the ld. D.R had drawn support from certain judicial pronouncements, as under:

- (i). Muthukumaran Rangarajan Vs. The Income tax Officer [ITA Nos. 1841 & 1842/Chny/2019, dated 04.12.2019].
- (ii). Shri Mahesh M. Gandhi Vs. ACIT- 20(2), Mumbai [ITA No. 2976/Mum/2016, dated 27.02.2017].

11. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, on a perusal of the 'SCN', dated 28.12.2010, it stands revealed that the Assessing Officer had failed to strike off the irrelevant default while calling upon the assessee to explain as to why penalty u/s 271 (1) (c) of the I.T Act may not be imposed on him. Insofar the validity of the jurisdiction assumed by the A.O is concerned, we find that the same has been assailed before us on the ground that as the irrelevant default in the 'Show cause' notice, dated 31.12.2010 was not struck off by the A.O, therefore, the assessee was not validly put to notice as regards the default for which he was called upon to explain as to why penalty may not be imposed on him under Sec. 271(1)(c) of the I.T Act.

12. We have given a thoughtful consideration to the facts of the case and are persuaded to subscribe to the claim of the assessee that the A.O had in the aforesaid 'SCN', dated 28.12.2010 had failed to point out the default for which penalty was sought to be imposed on the assessee. In our considered view, as both of the two defaults envisaged in Sec. 271(1)(c) i.e 'concealment of income' and 'furnishing of inaccurate particulars of income' are separate and distinct defaults which operate in their independent and exclusive fields, therefore, it was obligatory on the part of the A.O to have clearly put the assessee to notice as regards the default for which he was called upon to explain as to why penalty under Sec. 271(1)(c) may not be imposed on him. As observed by us hereinabove, a perusal of the 'Show cause' notice issued in the present case by the A.O under Sec. 274 r.w. Sec. 271(1)(c), dated 28.12.2010 clearly reveals that there was no application of mind on the part

of the A.O while issuing the same. We are of a strong conviction that the very purpose of affording a reasonable opportunity of being heard to the assessee as per the mandate of Sec. 274(1) would not only be frustrated but would be rendered redundant if an assessee is not conveyed in clear terms the specific default for which penalty under the said statutory provision was sought to be imposed on him. In our considered view, the indispensable requirement on the part of the A.O to put the assessee to notice as regards the specific charge contemplated under the aforesaid statutory provision viz. 'concealment of income' or 'furnishing of inaccurate particulars of income' is not merely an idle formality but is a statutory obligation cast upon him, which we find had not been discharged in the present case as per the mandate of law.

13. We would now test the validity of the aforesaid 'Show Cause' notice and the jurisdiction emerging therefrom in the backdrop of the judicial pronouncements on the issue under consideration. Admittedly, the A.O is vested with the powers to levy penalty under Sec. 271(1)(c) of the Act, if in the course of the proceedings he is satisfied that the assessee had either 'concealed his income' or 'furnished inaccurate particulars of his income'. In our considered view as penalty proceedings are in the nature of *quasi criminal* proceedings, therefore, the assessee as a matter of a statutory right is supposed to know the exact charge for which he is being called upon to explain that as to why the same may not be imposed on him. The non specifying of the charge in the 'Show cause' notice not only reflects the non application of mind by the A.O but in fact defeats the very purpose of giving a reasonable opportunity of being heard to the assessee as envisaged under Sec. 274(1) of the I.T Act. We find that the fine distinction between the said two defaults contemplated in Sec. 271(1)(c) viz. 'concealment of income' and 'furnishing of inaccurate particulars of income' had been appreciated at length by the **Hon'ble Supreme Court** in its judgments passed in the case of **Dilip & Shroff Vs. Jt. CIT (2007) 210 CTR (SC) 228** and **T. Ashok Pai Vs. CIT (2007) 292 ITR 11 (SC)**. The Hon'ble Apex Court in its aforesaid

judgments had observed that the two expressions, viz. 'concealment of particulars of income' and 'furnishing of inaccurate particulars of income' have different connotation. The Hon'ble Apex Court being of the view that the non-striking off the irrelevant limb in the notice clearly reveals a non-application of mind by the A.O had observed as under:-

"83. It is of some significance that in the standard proforma used by the Assessing Officer in issuing a notice despite the fact that the same postulates that inappropriate words and paragraphs were to be deleted, but the same had not been done. Thus, the Assessing Officer himself was not sure as to whether he had proceeded on the basis that the assessee had concealed his income or he has furnished inaccurate particulars. Even before us, the learned Additional Solicitor General while placing reliance on the order of assessment laid emphasis that he had dealt with both the situations.

84. The impugned order, therefore, suffers from non-application of mind. It was also bound to comply with the principles of natural justice [See Malabar Industrial Co. Ltd. Vs. CIT (2000) 2 SCC 718].

We are of the considered view that now when as per the settled position of law the two defaults viz. 'concealment of income' and 'furnishing of inaccurate particulars of income' are separate and distinct defaults, therefore, it was incumbent on the part of the A.O to have clearly specified his said intention in the 'Show cause' notice, which we find he had failed to do in the case before us. The aforesaid failure on the part of the assessee cannot be characterised as merely a technical default as the same had clearly divested the assessee of his statutory right of an opportunity of being heard and defend his case.

14. We find that the **Hon'ble High Court of Karnataka** in the case of **CIT Vs. SSA's Emerald Meadows (73 taxmann.com 241)(Kar)** following its earlier order in the case of **CIT Vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Kar)** has held that where the notice issued by the A.O under Sec. 274 r.w Sec. 271(1)(c) does not specify the limb of Sec. 271(1)(c) for which the penalty proceedings were initiated, i.e. whether for 'concealment of particulars of income' or 'furnishing of inaccurate particulars', the same has to be held as bad in law. The 'Special Leave

Petition' (for short 'SLP') filed by the revenue against the aforesaid order of the **Hon'ble High Court of Karnataka** had been dismissed by the **Hon'ble Supreme Court** in **CIT Vs. SSA's Emerald Meadows (2016) 73 taxmann.com 248 (SC)**. Apart from that, we find that a similar view had been taken by the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Samson Perinchery (ITA No. 1154 of 2014; Dt. 05.01.2017)(Bom)**.

15. We find that as averred by the Ld. A.R. the indispensable obligation on the part of the A.O to clearly put the assessee to notice of the charge under the aforesaid statutory provision viz. Sec. 271(1)(c) had been deliberated upon at length by a coordinate bench of the Tribunal, i.e. ITAT "C" Bench, Mumbai in the case of M/s Orbit Enterprises Vs. ITO-15(2)(2), Mumbai (ITA No. 1596 & 1597/Mum/2014, dated 01.09.2017). The Tribunal in the aforementioned case had in the backdrop of various judicial pronouncements concluded that the failure to specify the charge in the 'Show cause' notice clearly reflects the non application of mind by the A.O, and would resultantly render the order passed under Sec. 271(1)(c) in the backdrop of the said serious infirmity as invalid and *void ab initio*.

16. We have given a thoughtful consideration to the issue before us and after deliberating on the facts, are of the considered view, that the failure on the part of the A.O to clearly put the assessee to notice as regards the default for which penalty under Sec. 271(1)(c) was sought to be imposed on him by failing to strike off the irrelevant default in the 'SCN', dated 28.12.2010, had left the assessee guessing of the default for which he was being proceeded against for. We thus in the backdrop of our aforesaid observations are of a strong conviction that as the A.O had clearly failed to discharge his statutory obligation of fairly putting the assessee to notice as regards the default for which he was being proceeded against, therefore, the penalty under Sec. 271(1)(c) of Rs. 74,310/- imposed by him in clear violation of the mandate of Sec. 274(1) of the Act cannot be sustained. We thus for the aforesaid reasons not being able to persuade ourselves to subscribe to the imposition of penalty by the A.O, therefore, set aside the

order of the CIT(A) who had upheld the same. The penalty of Rs.74,310/- imposed by the A.O under Sec.271(1)(c) is quashed in terms of our aforesaid observations.

17. As the penalty imposed on the assessee under Sec. 271(1)(c) of the Act had been quashed by us for want of jurisdiction on the part of the A.O, therefore, we refrain from adverting to and adjudicating the merits of the case.

18. The appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 06.02.2020.

Sd/-
(L.P Sahu)
Accountant Member
Place: Amritsar;
Date 06.02.2020

Sd/-
(Ravish Sood)
Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Amritsar Bench, Amritsar.
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
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उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Amritsar Bench,
Amritsar