



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

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

ITA No.240/ALLD/2017
Assessment Year: 2011-12

Shri Kamalendra Bhadur Mishra Prop. M/s K.S. Engineering III-19, JME Colony Shakti dNagar, Sonebhadra	v.	DCIT Range III Mirzapur
TAN/PAN:ADBPM4445K		
(Appellant)		(Respondent)

Appellant by:	Shri K.R. Singh, Advocate		
Respondent by:	Shri A. K. Singh, D.R.		
Date of hearing:	13	02	2020
Date of pronouncement:	14	02	2020

ORDER

PER A. D. JAIN, V.P.:

This is assessee's appeal against the order of the ld. CIT(A), Allahabad, dated 20/9/2017 for assessment year 2011-12, taking the following grounds:

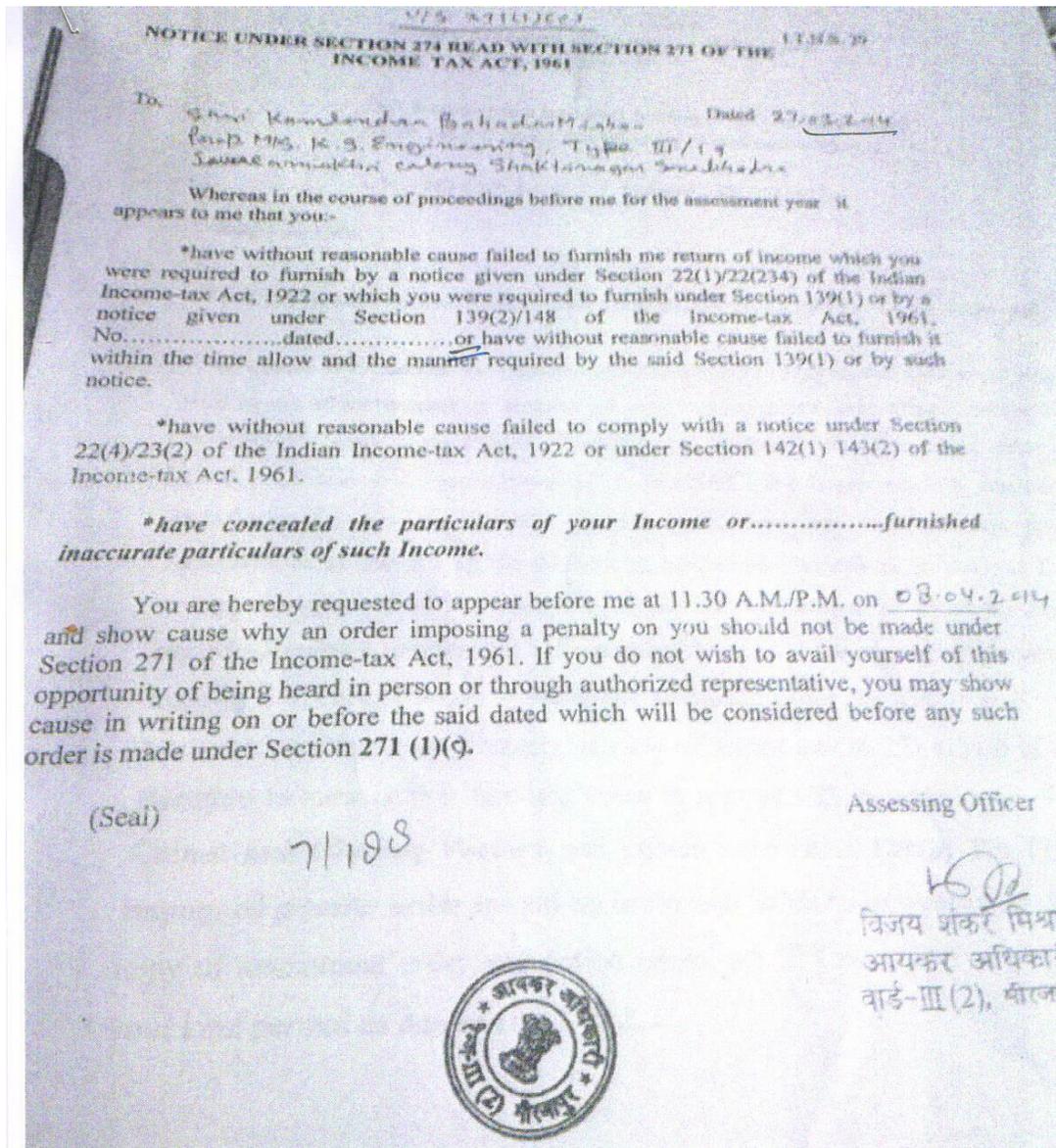
1. The Ld. CIT (Appeal), erred in law in not adjudicating the legal issue, whether the Ld. AO has applied his mind to frame the notice issued u/s 274 r.w. 271(1)(c) in regards to under which limb Ld. AO proposed to levy the penalty, either for concealment of income or furnishing inaccurate particulars of income.
2. The Learned CIT (Appeal) erred in law in not maintaining judicial discipline in view of the trite law that no penalty u/s 271 (1) (c) lie in case of estimated income.
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 learned CIT(A).

3. At the time of hearing before us, the ld. A.R. of the assessee invited our attention to the show cause notice dated 27/3/2014 for levy of 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 ld. 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 ld. D.R., however, relying on the impugned order, has contended that the penalty has been rightly confirmed; that during the assessment, the books of account of the assessee were rejected since the assessee did not co-operate and the net profit @ 5.5% was applied against that of 4.9% shown by the assessee; that this resulted in addition of Rs.1,15,830/-; that since the assessee had failed to produce the books of account, the Assessing Officer had been constrained to estimate the profit; that therefore, the case comes directly within Explanation 1 to section 271(1) of the Act; that as per this Explanation, where in respect of any facts material to the computation of the total income of any person under this Act, such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer to be false, or such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, then, the amount added or disallowed in

computing the total income of such person as a result thereof shall, for the purposes of section 271(1)(c), be deemed to represent the income in respect of which particulars have been concealed; that therefore, since in the present case, the assessee has not been able to substantiate the explanation offered by him and has failed to prove such explanation to be bona fide, the concealment of particulars of income are to be deemed.

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



6. 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.

7. In 'CIT vs. SSA's Emerald Meadows', [2016] 73 Taxmann.com 248, 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 section 271(1)(c) of the Act, 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.

8. In 'CIT and Another vs. Manjunath Cotton & Ginning Factory', [2013] 359 ITR 565 (Karn.), 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 section 271(1)(c) of the Act, 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. The 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.

9. In 'Meherjee Cassinath Holdings Pvt. Ltd vs. ACIT (ITAT Mumbai)', ITA No. 2555/MUM/2012, order dated 28/04/2017, 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 section 271(1)(c) he has to respond.

10. In 'Chandra Prakash Bubna vs. Income Tax Officer, Ward 27(3), Kolkata', (ITAT Kolkata Bench) [2015] 64 taxmann.com 155, 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.

11. In "Madan Lal Kishori Lal vs. CIT" 197 CTR (All) 144, wherein, the Hon'ble Allahabad High Court, following 'K.P. Madhusudanan' in Civil Appeal No. 6465/2000 (SC), has held that Explanation-1 applies whether or not the Assessing Officer

has invoked it in the order or in the notice. This judgment is not an authority for the issue under consideration before the Bench. The judgment explains the scope of Explanation- 1 appended to section 271(1)(c) of the Act. It has been held that the onus of the assessee will not get discharged by furnishing an explanation without any further proof; that in Explanation-1 to section 271(1)(c), the onus is the assessee; that where the AO issues a notice to the assessee, he makes the assessee aware that the provisions thereof are to be used against him and these provisions include Explanation-1 to section 271(1)(c); that where the returned income is less than 80% of the assessed income, the Explanation is automatically attracted. In the case under consideration, however, the issue is not about the applicability or non- applicability of Explanation-1 to section 271(1)(c), the issue is regarding the validity and legality of the notice. It is only when a valid notice is issued, that the question of considering the assessee's explanation/reply in the light of Explanation -1 would arise.

12. 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.

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

Order pronounced in the open Court on 14/02/2020.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER
DATED:14/02/2020

Sd/-
[A. D. JAIN]
VICE PRESIDENT

JJ:1302

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar