

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.419/Ind/2015

Assessment Year 2006-07

M/s. Kalani Industries Pvt. Ltd, 11 Tukoganj Main Road, Indore (Appellant)	Vs.	DCIT 1(1), Indore (Respondent)
PAN AAACK7074P		

Revenue by	Smt. Ashima Gupta, CIT & Shri R.S. Ambedkar, Sr. DR
Assessee by	S/Shri Manjit Sachdeva & Avinash Gaur, Advocates
Date of Hearing	26.03.2019
Date of Pronouncement	01.04.2019

ORDER

PER MANISH BORAD, AM.

The above captioned appeal is filed at the instance of assessee pertaining to Assessment Years 2006-07 and is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-I (in short 'Ld.CIT(A)'), Indore dated 21.01.2015 which is arising out of the order u/s 271(1)(c) of the Income Tax Act 1961(In short the 'Act') dated 29.06.2012 framed by DCIT-1(1), Indore.

2. Assessee has raised following grounds of appeal;

01. That the Learned Commissioner of Income Tax (Appeal) in giving direction of levying the penalty under section 271(1)(c) of the Income Tax Act during the appeal proceedings on the addition made of Rs.18,00,000/- on account of loose papers and of Rs.1,10,914/- under section 14A of the Income Tax Act during the assessment proceedings.

02. That the Learned Commissioner of Income Tax (Appeal) gave direction of levying the penalty without providing any opportunity to the assessee and as such direction given to levy penalty is against the natural law of justice.

03. That the Learned Commissioner of Income Tax (Appeal) gave the direction to levy the penalty suo motto and without appreciating that no penalty proceedings were initiated by the learned Assessing Officer on the additions made during the assessment proceedings.

04. That the penalty levied is unlawful and not based on the facts of the case.

05. That the appellant craves leave to add, alter, amend and jar delete any of the grounds of appeal.

ADDITIONAL GROUND OF APPEAL

01 That the Assessing Officer failed to specify whether the assessee had concealed the particulars of Income or furnished **inaccurate particulars of Income.**

02 That in view of the decision in the cases of '-

1. Pr. Commissioner of Income Tax vis. Kulwant Singh Bhatia (2018) **33 IT J 777 (MP)**

*2 Dee Vee Foods (P.) Lld vis. Dy. Commissioner of Income Tax (2018) 33 IT J 245
(Trib.-Indore)*

3. Harish Chand Soni vs. Income Tax Officer (2018) 32 IT J 728 (Trib-Jabalpur)

3. During the course of hearing Ld. Counsel for the assessee raised additional legal ground challenging the validity of notice issued u/s 274 r.w.s. 271(1)(c) of the Act claiming it to be illegal and bad in law. We find that though the assessee has not raised the legal ground at the time of filing the appeal but in our considered opinion and following the ratio of judgment of Hon'ble Apex Court in the case of National Thermal Power Company Limited 229 ITR 383(SC) as well as in the case of Jute Corporation of India 178 ITR 668 (SC) the additional legal grounds raised before us deserves to be admitted for adjudication, if the same involves point of law which does not require any further investigation of facts. It is also clear that the issues raised in the additional ground of appeal goes to the root of the jurisdiction of the Assessing Officer to levy the penalty u/s 271(1)(c) of the Act and therefore the same is relevant to determine the liability of the assessee for penalty u/s 271(1)(c) of the Act. Accordingly the additional ground is admitted for adjudication.

4. Briefly stated facts as culled out from the records are that the assessee is a company engaged in the business of manufacturing, leasing & hire purchase, wind farm, trading, Real Estate development and cold storage. A search u/s 132 of the Act was conducted at the assessee's business premises on 16.4.2009. Notices u/s 153A dated 22.10.2010 was issued and served upon the assessee on 28.10.2010 and in pursuance to it the assessee had filed its return of income declaring total income at NIL. Assessment u/s 153A r.w.s. 143(3) of the Act was completed computing income at Rs.94,95,920/-. Aggrieved assessee preferred appeals before Ld. CIT(A) and partly succeeded. Subsequently after initiating penalty proceedings u/s 271(1)(c) of the Act penalty at Rs.18,00,000/- for Assessment Year 2006-07 was levied for concealing the income by furnishing wrong particulars of income. Aggrieved assessee preferred an appeal before Ld.CIT(A) but could not succeed.

5. Aggrieved assessee is now in appeal before the Tribunal challenging the legality of the penalty proceedings as well as raising grounds on merits challenging the penalty levied u/s 271(1)(c) of the Act at Rs.18,00,000/-.

6. Ld. Counsel for the assessee submitted that as per provisions of Section 271(1)(c) of the Act the penalty can be initiated either for concealing the particulars of income or for furnishing inaccurate particulars of income, whereas the Ld.A.O has not recorded any specific charge on the assessee, as to whether penalty is to be levied for 'furnishing inaccurate particulars of income or concealing the particulars of income'. Placing reliance on the judgments mentioned in the written submission which mainly includes judgment of jurisdictional High Court in the case of PCIT Vs Kulwant Singh Bhatia ITA No.9 of 2018 dated 9.5.2018, the Ld. Counsel for the assessee contended that the Ld.A.O has failed in comply the provisions of section 271(1)(c) of the Act by initiating the penalty proceedings with no specific charge. Reliance was also placed on Indore Tribunal decision in the case of Varad Mehta ITA No.693/Ind/16 dated 06.12.2018.

7. Per contra Departmental Representative vehemently argued supporting the orders of lower authorities.

8. We have heard rival contentions and perused the records placed before us. The issues raised by the assessee revolves around the levy of penalty at Rs.18,00,000/- levied by the Ld. A.O and confirmed by

Ld.CIT(A).

8. Now the assessee is in appeal before the Tribunal, firstly raising the legal issue pleading that Ld. A.O has wrongly initiated the penalty proceedings by not specifying the charge for levy of penalty i.e. whether the penalty proceedings has been initiated for concealing particulars of income or for furnishing the inaccurate particulars of income. It was also pleaded by the Ld. Counsel for the assessee that though the Ld. Assessing Officer has made proper satisfaction on record in the assessment order for initiating penalty proceedings but in the notice issue u/s 274 r.w.s. 271(1)(c) of the Act, but he remained silent by not specifying as for which charge the penalty proceedings have been initiated. To examine this fact we have gone through the impugned notice issued on 30.10.2012 for initiating the penalty proceedings u/s 271(1)(c) of the Act for Assessment Year 2006-07. For reference we reproduce below the notice u/s 274 of the Act for Assessment Year 2006-07;

F.No.DCIT 1(1)/Ind/Penlaty u/s 271/11-12

Date: 29/12/2011

PAN AAACK7074P

Kalani Industries Pvt. Ltd
ITA No.419/Ind/2015

To

M/s. KALANI INDUSTRIES PVT. LTD,
11, SOUTH TUKOGANJ, MAIN ROAD, INDORE,

Sir,

**NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(c) OF INCOME TAX
ACT, 1961**

Whereas in the course of proceedings before me for the A.Y 2006-07 it appears to me that you:-

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

You are requested to appear before me at 11.30 AM on 16/01/2012 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.

Yours faithfully,

Sd/-

(Sachchidanand Dubey)

Deputy Commissioner of Income Tax-1(1)

Indore

9. From perusal of the above show cause notices we find that the Ld.A.O has merely mentioned the section but the specific charge i.e. whether the penalty have been initiated for concealment of particulars of income or for furnishing inaccurate particulars of income has not been mentioned. Now we need to adjudicate as to "*whether such type of notice*

which does not speak about the specific charge leveled against the assessee is valid and tenable in the eyes of law”.

10. We find that similar issue came up for adjudication before us in the case of Varad Mehta ITA No.693/Ind/16 dated 06.12.2018 (*supra*) wherein we have decided the issue in favour of the assessee observing as follows;

“11. We have heard rival contentions and perused the records placed before us. The issues raised by the assessee revolves around the levy of penalty at Rs.16,00,000/- levied by the Ld. A.O and confirmed by Ld.CIT(A) on the addition of Rs.51,00,000/- from undisclosed sources for purchase of immovable properties. Perusal of records shows that the assessee remaining negligent and non compliant to various opportunities provided by the Ld. A.O as well as Ld.CIT(A) during the course of penalty proceedings as well as appellate proceedings towards the levy of penalty.

12. Now the assessee is in appeal before the Tribunal, firstly raising the legal issue pleading that Ld. A.O has wrongly initiated the penalty proceedings by not specifying the charge for levy of penalty i.e. whether the penalty proceedings has been initiated for concealing of particulars of income or for furnishing the inaccurate particulars of income. It was also pleaded by the Ld. Counsel for the assessee that though the Ld. Assessing Officer has made proper satisfaction on record in the assessment order for initiating penalty proceedings but in the notice issue u/s 274 r.w.s. 271(1)(c) of the Act, but Ld. A.O remained silent by not specifying as to which charge the penalty proceedings have been initiated. To examine this fact we have gone through the impugned notice issued for initiating the penalty proceedings u/s 271(1)(c) of the Act which is placed at Page-52 of the Paper book and the relevant extract is reproduced below:

To

Shri Varad Mehta

239, Sunny Palace M P Nagar Zone-1,

Bhopal

Sir / Madam,

Sub:- Penalty proceeding u/s .. 271(1) (c) ..

of the Income Tax Act 1961 for the AY 2008.09

In connection with the penalty proceedings u/s, 271(1) (c) for the assessment year(s) 2008-09 you are requested to attend my office on 18.01.2010 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/-

(Shrikant Namdeo)

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

Bhopal

13. From perusal of the above show cause notice we find that the Ld.A.O has merely mentioned the section but the specific charge i.e. whether the penalty have been initiated for concealment of particulars of income or for furnishing inaccurate particulars of income has not been mentioned. Now whether such type of notice which does not speak about the specific charge leveled against the assessee is valid and tenable in the eyes of law needs to be examined.

14. We find that similar issue came up before the jurisdictional High Court in the case of Shri Kulwant Singh Bhatia (supra) wherein the Hon'ble Court discussed the judgment of Hon'ble High Court in the case of CIT V/s Manjunatha Cotton Ginning Factory (supra) and CIT V/s SSA's Emerald

Meadows (*supra*) 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. Similarly in the case of CIT V/s Manjunatha Ginning Factory, Hon'ble High Court of Karnataka held that “the notice issued u/s 274 r.w.s. 271(1)(c) of the Act should specifically mention the ground in section 271(1)(c) whether concealment of income or for furnishing in accurate particulars of income. Sending printed form where all ground of section 271(1)(c) would not mentioned the specific requirement of law. Assessee should know the grounds on which he has charged specific otherwise opportunities of natural justice denied. On the basis of such proceedings no penalty could be imposed to the assessee. Taking up the penalty proceedings on one limb and finding the assessee in another limb is bad in law”. Though in the instant appeal the Ld. A.O has made proper satisfaction in the body of the assessment order but in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act he failed to mention the limbs for which penalty proceedings have been initiated. It is the negligence of the Ld. A.O in not making proper specific charge in the notice u/s 274 about the addition for which penalty proceedings have been initiated. Ld. A.O should be clear as to whether the alleged addition goes under the limb of “concealment of particulars of income” or “furnishing inaccurate particulars of income”. Merely issuing notice in general proforma will negate the very purpose of natural justice as held by the Hon'ble Apex Court in the case of Dilip N Shraf 161 Taxmann 218 that “the quasi- criminal proceedings u/s 271(1)(c) of the Act ought to comply with the principles of natural justice.

14. We therefore respectfully following above referred judgments and in the given facts and circumstances of the case are of the considered view that the

alleged notice issued u/s 274 r.w.s. 271(1)(c) of the Act dated 31.12.10 is invalid, untenable and suffers from the infirmity of non application of mind by the Assessing Officer. We accordingly direct to delete the penalty of Rs.16,00,000/- imposed u/s 271(1)(c) on this ground itself. We accordingly allow the additional ground raised by the assessee on the legality of the penalty proceedings initiated u/s 271(1)(c) of the Act. Since the penalty u/s 271(1)(c) also has been dealt on the preliminary points other arguments of the assessee dealing with the merits of the levy of penalty are not been dealt with, as the same are rendered academic in nature and the appeal of the assessee for the Assessment Year 2008-09 is allowed”.

11. We therefore respectfully following above referred judgments and in the given facts and circumstances of the case are of the considered view that the alleged notice issued u/s 274 r.w.s. 271(1)(c) of the Act dated 30.10.12 is invalid, untenable and suffers from the infirmity of non application of mind by the Assessing Officer. We accordingly direct to delete the penalty of Rs.18,00,000/- for Assessment Years 2006-07 levied u/s 271(1)(c) on this ground itself. We accordingly allow the additional ground raised by the assessee on the legality of the penalty proceedings initiated u/s 271(1)(c) of the Act. Since the issue of penalty u/s 271(1)(c) has been dealt and penalty deleted on the preliminary legal point itself, other arguments of the assessee dealing with the merits for the levy of penalty are not been dealt by us, as the same are rendered academic in nature and thus need not be adjudicated.

Kalani Industries Pvt. Ltd
ITA No.419/Ind/2015

15. In the result appeal (ITA No.419/Ind/2015) of the assessee for Assessment Year 2006-07 is allowed.

The order pronounced in the open Court on 01.04.2019.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 1st April, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/
DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore