IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW

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

ITA No.331/Lkw/2019
Assessment Year:2013-14

Shri Suraj, 2A/388, Azad Nagar, Kanpur. PAN:ANRPS 4271M	Vs.	Dy.C.I.T., Central Circle-1, Kanpur.
(Appellant)		(Respondent)

Appellant by	Shri P. K. Kapoor, C. A.
Respondent by	Shri Ajay Kumar, D.R.
Date of hearing	19/02/2020
Date of pronouncement	26/06/2020

O R D E R

PER A. D. JAIN: V.P.

This is an appeal filed by the assessee against the order of learned CIT(A)-IV, Kanpur dated 29/03/2019 pertaining to assessment year 2013-2014.

2. In this appeal, the only grievance of the assessee is against imposition of penalty under section 271(1)(c) of the Act which has been confirmed by the learned CIT(A).

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 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.

4. The ld. D.R., on the other hand, relied on the orders of the authorities below. Learned D. R. also relied on the judgment of Hon'ble Supreme Court in the case of Sundram Finance Ltd. vs. DCIT [2018] 99 Taxmann.com 152 (SC).

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:

Income Tax Department
Ministry of Finance
Government of India

Office of the
Deputy Commissioner of Income Tax,
"Central Circle-I"
10/503, Allenganj, Kanpur- 208002

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

PAN: ANRPS4271M Dated: 11.02.2016

To,

SHRI SURAJ,
117/K/137, SARVODAYA NAGAR,
KANPUR

Whereas in the course of proceedings before me for the **assessment year 2013-14** it appears 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 139 of Income Tax Act, 1961 or have without reasonable cause failed to furnish it within the time allowed and the manner required by such notice.

* have without reasonable cause failed to comply with a notice under section 142(1) of Income Tax Act, 1961 dated

..... dated .....

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

You are hereby required to appear before me at **11:30 A.M. on 10/03/2016** and show cause why an order imposing a penalty on you should not be made under section 271(1) (c) of 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) of Income Tax Act, 1961.

(Rakesh Kumar, IRS)
Dy. Commissioner of Income Tax,
Central Circle-I, Kanpur
(RAKESH KUMAR)
Dy. Commissioner of Income Tax
Central Circle-I, Kanpur

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 the 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. We 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 the penalty.

8. It is pertinent to mention here that this order is being pronounced after a period of 90 days from the date of conclusion of the hearing. In this regard, we place reliance on the decision of co-ordinate bench of this Tribunal in the case of JSW Ltd in ITA Nos. 6264 & 6103/Mum/2018 dated 14.5.2020, wherein this issue has been addressed in detail allowing time to pronounce the order beyond 90 days from the date of conclusion of hearing by excluding the days for which the lockdown announced by the Government was in force. The relevant observations of the tribunal in the said binding precedent are as under:-

> *"7. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of these appeals was concluded on 7th January 2020, this order thereon is being pronounced today on 14th day of May, 2020, much after the expiry of 90 days from the date of conclusion of hearing. We are also alive to the fact that rule 34(5) of the Income Tax Appellate Tribunal Rules 1963, which deals with pronouncement of orders, provides as follows:*
>
> *(5) The pronouncement may be in any of the following manners :—*
>
> *(a) The Bench may pronounce the order immediately upon the conclusion of the hearing.*
>
> *(b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement.*
>
> *(c) In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily (emphasis supplied by us now) be a day*

beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board.

8. *Quite clearly, "ordinarily" the order on an appeal should be pronounced by the bench within no more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression "ordinarily" has been used in the said rule itself. This rule was inserted as a result of directions of Hon'ble jurisdictional High Court in the case of Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)] wherein Their Lordships had, inter alia, directed that "We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile (emphasis, by underlining, supplied by us now), all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment". In the rule so framed, as a result of these directions, the expression "ordinarily" has been inserted in the requirement to pronounce the order within a period of 90 days. The question then arises whether the passing of this order, beyond ninety days, was necessitated by any "extraordinary" circumstances.*

9. *Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon'ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid 19 epidemic, and this lockdown was extended from time to time. As a matter of fact, even before this formal nationwide lockdown, the functioning of the Income Tax Appellate Tribunal at Mumbai was*

severely restricted on account of lockdown by the Maharashtra Government, and on account of strict enforcement of health advisories with a view of checking spread of Covid 19. The epidemic situation in Mumbai being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial wok all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon'ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that "In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown". Hon'ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, "It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly", and also observed that "arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June 2020". It has been an unprecedented situation not only in India but all over the world. Government of India has, vide notification dated 19th February 2020, taken the stand that, the coronavirus "should be considered a case of natural calamity and FMC (i.e. force majeure clause) maybe invoked, wherever considered appropriate, following the due procedure…". The term 'force majeure' has been defined in Black's Law Dictionary, as 'an event or effect that can be neither anticipated nor controlled' When such is the position, and it is officially so notified by the

Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an "ordinary" period.

10. *In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of Otters Club Vs DIT [(2017) 392 ITR 244 (Bom)], Hon'ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon'ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that directed "while calculating the time for disposal of matters made time- bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly". The extraordinary steps taken suo motu by Hon'ble jurisdictional High Court and Hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words "ordinarily", in the light of the above analysis of the legal position, the period*

during which lockout was in force is to excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case. Of course, there is no, and there cannot be any, bar on the discretion of the benches to refix the matters for clarifications because of considerable time lag between the point of time when the hearing is concluded and the point of time when the order thereon is being finalized, but then, in our considered view, no such exercise was required to be carried out on the facts of this case.

11. *To sum up, the appeal of the assessee is allowed, and appeal of the Assessing Officer is dismissed. Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board."*

9. Respectfully following the aforesaid judicial precedent, we proceed to pronounce this order beyond a period of 90 days from the date of conclusion of hearing.

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

(Order pronounced in the open court on 26/06/2020)

Sd/.	**Sd/.**
(T. S. KAPOOR)	**(A. D. JAIN)**
Accountant Member	**Vice President**

Dated:26/06/2020
*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