

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.7272/MUM/2018  
(Assessment Year: 2014-15)**

Shri Jitesh Jayendra Bhadaliya  
A/1104, Vasant Aradhana Tower  
CHSL, Mahavir Nagar,  
Dahanukarwadi, Kandivali (W),  
Mumbai - 400067

Vs. Income Tax Officer-33(2)(1)  
Room No. 613, C-12,  
Pratyakshakar Bhavan,  
Bandra Kurla Complex,  
Bandra (East),  
Mumbai - 400051

**PAN No. AACPB3044P**

**(Assessee)**

**(Revenue)**

Assessee by : Shri Kumar Kale , A.R  
Revenue by : Ms. Usha Gaikwad, D.R

Date of Hearing : 25/02/2021  
Date of pronouncement : 03/03/2021

**ORDER**

**PER RAVISH SOOD, J.M:**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-45, Mumbai, dated 10.09.2018 which in turn arises from the penalty order passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act'), dated 12.06.2017 for A.Y. 2014-15. The assessee has assailed the impugned order on the following grounds of appeal before us:

"Being aggrieved by the order dated 10.09.2018 passed by the learned Commissioner of Income Tax (Appeals)-45, Mumbai ["Ld. CIT(A)"] u/s 250 of the Income-tax Act, 1961 ("Act"), your appellant prefers this appeal, among others, on the following grounds of appeal, each of which is without prejudice to, and independent of, the other:

**1. Levy of Penalty u/s. 271(1)(c) ; Rs.6.02,767/-**

- a. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in not appreciating that the show cause notice u/s. 274 r. w. s. 271(1)(c) of the Act dated 23.12.2016

issued by the Ld. AO was bad in law, having been issued without specifying the precise charge for imposition of penalty.

- b. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in not appreciating that the penalty order is bad in law inasmuch as the penalty was imposed by the Ld. AO for concealment of particulars of income, whereas the charge made out against the appellant in the relevant assessment order was for furnishing inaccurate particulars of income with a view to concealment of income.
- c. On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in confirming the levy of penalty, without appreciating that the appellant had offered satisfactory explanation which was substantiated by the documentary evidence placed on record, and that therefore, there was no basis for imposition of the penalty under section 271(1)(c) of the Act.”

Your appellant, therefore, prays that the Ld. AO's order imposing the penalty of Rs.6,02,767/- u/s. 271(1)(c) of the Act be quashed and the penalty be cancelled.

Your appellant craves leave to alter, modify, amend or delete the above ground of appeal, or to add one or more new ground(s), as may be necessary.”

2. Briefly stated, the assessee had filed his return of income for A.Y. 2014-15 on 04.10.2014, declaring a total income of Rs.9,89,710/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. The A.O vide his order passed under Sec. 143(3), dated 23.12.2016 assessed the income of the assessee at Rs.29,40,420/- after making the following additions:

Sr. No.	Particulars	Amount
1.	Addition under Sec. 68 of the sale proceeds of shares by rejecting the assessee's claim for exemption of LTCG on the sale of the same under Sec. 10(38)	Rs. 18,93,883/-
2.	Addition under Sec. 69C towards commission paid by the assessee for obtaining the aforesaid LTCG. (3% of Rs.18,93,883/-)	Rs. 56,816/-.

At the time of culminating the assessment the A.O initiated penalty proceedings under Sec. 271(1)(c) for both of the aforesaid two additions for furnishing of inaccurate particulars of income with the view to concealment of income.

4. Subsequently, the A.O vide his order passed under Sec. 271(1)(c), dated 12.06.2017 imposed a penalty of Rs.6,02,767/- on the assessee in respect of the aforesaid additions of Rs. 19,50,699/ - [Rs. 18,93,883/- (+) Rs.56,816/-].

5. Aggrieved the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) not finding favour with the contentions advanced by the assessee dismissed the appeal.

6. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. At the very outset of the hearing of the appeal it was submitted by the Id. Authorized Representative (for short 'A.R') for the assessee, that the A.O had wrongly assumed jurisdiction and without validly putting the assessee to notice as regards the default for which the impugned penalty was purported to be imposed on him, had therein levied penalty under the aforesaid statutory provision. In order to buttress his aforesaid claim the Id. A.R took us through the copy of the 'Show cause' notice (SCN) issued under Sec. 274 r.w.s 271(1)(c), dated 23.12.2016, Page 1 of the assessee's paper book (for short 'APB'). Apart from that, it was submitted by the Id. A.R that even in the assessment order the impugned penalty proceedings were stated to have been initiated by the A.O without clearing pointing out the default and by merely stating that the same were initiated for furnishing inaccurate particulars and concealment of income. It was submitted by the Id. A.R that involving identical facts the A.O had imposed penalty in the case of a related party of the assessee, viz. Smt Divya Shailesh Bhadaliya. It was submitted by the Id. A.R that as the A.O in the case of the aforesaid related party had also failed to point out the default for which the penalty was sought to be imposed, the Tribunal, vide its order passed in ITA No. 7273/Mum/2018, dated 20.02.2019 had vacated the penalty (copy placed on record). The Id. A.R took us through the order passed by the Tribunal in the case of the aforesaid related party, viz. Smt Divya Shailesh Bhadaliya (supra), which revealed that the penalty was quashed by the Tribunal inter alia for the reason that pursuant to the failure on the part of the A.O to point out the specific charge for which penalty under Sec. 271(1)(c) was proposed to be levied, the assessee had remained divested of an opportunity to explain her case that no such penalty was liable to be imposed. Backed by his aforesaid contentions, it was submitted by the Id. A.R that as the factual position in the case of the assessee remained the same thus, the penalty imposed by the A.O under Sec. 271(1)(c) in the present case was also liable to be quashed on the ground of illegal assumption of jurisdiction by the A.O.

7. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the Ld. D.R that no infirmity did emerge from the order passed by the A.O under Sec. 271(1)(c), which thereafter had rightly been upheld by the CIT(A).

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Admittedly, on a perusal of the 'SCN', dated 23.12.2016, 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 23.12.2016 was not struck off by the A.O therefore, the assessee was not validly put to notice as regards the default for which penalty was sought to be imposed on him under Sec. 271(1)(c) of the I.T Act.

9. 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 23.12.2016 failed to point out the default for which penalty was sought to be imposed on him. 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 the said statutory provision 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 23.12.2016 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.

10. 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 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.

11. Coming back to the validity of the 'SCN', dated 23.12.2016 issued by the A.O without pointing out the default for which the penalty was sought to be imposed, we shall hereinafter deliberate on the same in the backdrop of the various judicial pronouncements. 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)** had 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)**. Also, the **Hon'ble Supreme Court** in its recent order in the case of **DCIT (Central) Vs. Golden Peace Hotels Resorts (P) Ltd. (2021) 124 taxman.com 249 (SC)** had dismissed the SLP of the revenue and upheld the order of the Hon'ble High Court of Bombay, wherein the order of the Tribunal quashing the penalty imposed by the A.O for the aforesaid jurisdictional defect i.e not putting the assessee to notice about the default for which penalty u/s 271(1)(c) was sought to be imposed was upheld by the Hon'ble High Court .

12. 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.

13. 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 23.12.2016, had left the assessee guessing of the default for which he was being proceeded against for. As observed by us hereinabove, the Tribunal in the case of a related party of the assessee viz. Smt Divya Shailesh Bhadaliya (supra) had while disposing off her appeal in ITA No. 7273/Mum/2018, dated 20.02.2019 quashed the penalty imposed by the A.O u/s 271(1)(c), for the reason, that the A.O had wrongly assumed jurisdiction without validly putting the assessee to notice vide his 'SCN' issued under Sec. 274 r.w.s 271(1)(c) as regards the default for which the penalty was sought to be imposed on her. As the facts and the issue involved in the case of the assessee before us remains the same, we, thus, in terms of our observations recorded hereinabove find no reason to take a different view and are unable to persuade ourselves to sustain the penalty of Rs.6,02,767/- imposed by the A.O under Sec. 271(1)(c) of the Act. Accordingly, we herein set aside the order of the CIT(A) and vacate the penalty of Rs.6,02,767/- imposed by the A.O u/s 271(1)(c) of the Act.

14. The appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 03.03.2021

Sd/-  
Rajesh Kumar  
(ACCOUNTANT MEMBER)

Mumbai, Date: 03.03.2021  
PS: Rohit

Sd/-  
Ravish Sood  
(JUDICIAL MEMBER)

**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "F" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar  
ITAT, Mumbai