

**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 Nos.265 to 270/Lkw/2019
Asstt. Year:2002-2003 to 2007-08

Dy.C.I.T., Range-6, Lucknow.	Vs.	M/s Scooters India Ltd., Sarojini Nagar, Lucknow. PAN:AADCS7796R
(Appellant)		(Respondent)

C.O.Nos.10 to 15/Lkw/2019
(in ITA Nos.265 to 270/Lkw/2019)
Asstt. Year:2002-2003 to 2007-08

M/s Scooters India Ltd., Sarojini Nagar, Lucknow. PAN:AADCS7796R	Vs.	Dy.C.I.T., Range-6, Lucknow.
(Appellant)		(Respondent)

Revenue by	Smt. Sheela Chopra, CIT., D.R. Shri Ajay Kumar, D. R.
Assessee by	Shri Rakesh Garg, Advocate
Date of hearing	20/09/2021
Date of pronouncement	02/11/2021

ORDER

PER BENCH:

These six appeals have been filed by Revenue against the order of learned CIT(A)-2, Lucknow dated 07/02/2019 pertaining to assessment year 2002-2003 and dated 11/02/2019 pertaining to assessment years 2003-04 to 2007-08. The Revenue has taken similar grounds in all these appeals

which were heard together therefore, for the sake of convenience, a common and consolidated order is being passed. For the sake of convenience, the grounds of appeal taken by the Revenue in I.T.A. No.265 are reproduced below:

"1. The Ld. CIT(A) has erred in law and on facts in deleting the penalty amounting to Rs. 1,00,00,000/- levied u/s 271(1)(c) of the I.T. Act, 1961 ignoring the fact that the additions made by the AO had been confirmed in the appellate proceedings. The reliance is also placed on Hon'ble Supreme Court in the case of Union of India Vs Dharmendra Textile Processors (2008) 306 ITR 277/174 Taxman 571 and Hon'ble High court of Madras Order in the case of Sundaram Finance Ltd. Vs Assistant Commissioner of Income Tax Co. Circle -VI(4), Chennai, 93 taxmann.com 250 (Madras) (2018)403 ITR 407 where it had been held that mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities and that even assuming that there was defect in the notice, it had caused no prejudice to the assessee and the assessee clearly understood what was the purport and import of notice issued under section 274 r/w section 271 of the I.T. Act.

2. The appellant craves leave to add or amend any one or more of the grounds of appeals, as stated above, as and when need to doing so arises with the prior permission of the Court."

2. At the time of hearing Learned D. R. vehemently argued that the CIT(A) has erred in deleting the penalty overlooking the fact that the additions on which the penalty has been levied has been upheld in appeal and has also ignored the decision of Hon'ble Supreme Court in the case of Union of India Vs Dharmendra Textile Processors (2008) 306 ITR 277/174 Taxman 571 and Hon'ble High court of Madras Order in the case of Sundaram Finance Ltd. Vs Assistant Commissioner of Income Tax Co. Circle -VI(4), Chennai, 93 taxmann.com 250 (Madras), wherein the penalty levied

u/s 271(1)(c) has been upheld. Learned D. R. drew our specific attention to the decision of Hon'ble Madras High Court in the case of Sundaram Finance Ltd. (supra) wherein the issue of striking of the limb has been decided in favour of the Revenue.

3. On the other hand, Learned counsel for the assessee invited our attention to the paper book filed wherein show cause notice for penalty under section 274 read with 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. Learned counsel for the assessee placed reliance on the following case laws:

- i) PCIT vs. Sahara India Life Insurance Co. Ltd. ITA No. 475/2019 Order dt. 02.08/2019.
- ii) Pr.CIT (Central) vs. Goa Coastal Resorts & Recreation Pvt. Ltd. ITA No. 24 of 2019 Order dt. 11.11.2019 High Court of Bombay at Goa.
- iii) International Tractors Ltd. vs. Dy.CIT ITA No. 6098/Del/2016 Order dt. 21.02.2020 ITAT, Delhi.
- iv) DCIT vs. Metro Tyres Pvt. Ltd. ITA No. 2874/Del/2016 Order dt. 24.06.2020 ITAT, Delhi.
- v) Radhika Surgical Pvt. Ltd. vs. ACIT – ITA No. 5089/Del/2017 Order dt. 31.05.2021 - ITAT Delhi.

- vi) Singh Consultancy Pvt. Ltd. vs. ITO – ITA No. 3061/Del/2017 Order dt. 09.04.2021- ITAT Delhi.
- vii) Sachin Arora vs. ITO - ITA No. 118/Agra/2015 Order dt. 19.12.2017 –ITAT, Agra.
- viii) M/s. Risha Tour & Travels vs. ITO-2(3), Kanpur – ITA No. 606/LKW/2018 Order dt. 23.01.2020, ITAT, Lucknow Bench.
- ix) Shri Suraj vs. Dy.CIT, CC-1, Kanpur – ITA No. 331/LKW/2019 Order dt. 26.06.2020, ITAT, Lucknow Bench.
- x) Off late the decision of Hon'ble ITAT Delhi Bench in the case of Addl.CIT, Spl. Range I vs. Airports Authority of India, ITA No. 369/Del/2018 Order dt. 13.08.2021

Learned counsel for the assessee submitted that relying upon the decision of Hon'ble Supreme Court in the case of CIT vs. SSA's Emerald Meadows [2016] 73 Taxmann.com 248 and also of the decision of Hon'ble Karnataka High Court in the case of CIT and Another vs. Manjunath Cotton & Ginning Factory [2013] 359 ITR 565 (Kar), I.T.A.T. Lucknow Bench in various cases have held that that in absence of specific charge in the notice issued u/s 274 read with section 271(1)(c), the penalty cannot be levied. Learned counsel for the assessee submitted that the decision of Dharmendra Textile Processors, relied on by Learned D. R., is not applicable as that case was under Central Excise wherein the duty payable had not been paid and there was issue with respect to mens rea and the issue of validity of notice and the proceeding based thereon was not in question and it was submitted that the decision of Dharmendra Textile Processors has been considered by Hon'ble Apex Court in the case of Reliance Petrochemicals Ltd. and further the Agra Bench of the Tribunal in the case of Sachin Arora in I.T.A. No.118/Agra/2015, vide order dated 19/12/2017 in para 39 of its order has

considered such decision and after considering such decision has allowed relief to the assessee. As regards the reliance placed by Learned D. R. on the judgment of Hon'ble Madras High Court in the case of Sundram Finance Ltd., Learned counsel for the assessee submitted that the plea of notice being invalid was raised before Hon'ble High Court for the first time after a lapse of ten years at the time of hearing and therefore, the Hon'ble High Court was of the view that if the assessee had any grievance with respect to the validity of notice, it should have been raised before the lower appellate authority and moreover, Hon'ble High Court had decided the appeal on the merits of the case whereas in the present case, the issue regarding validity of notice has been raised before the authorities below therefore, learned CIT(A), after considering the legal position and after considering the decision of Hon'ble Apex Court in the case of SSA Emerald has held the notice issued u/s 271(1)(c) of the Act not a valid notice. It was submitted that the notice u/s 271(1)(c) is a jurisdictional notice and for levy of penalty, jurisdiction has to be assumed and for assuming jurisdiction, a valid notice has to be issued and if the notice itself is not valid, the Assessing Officer cannot assume jurisdiction and hence cannot impose penalty. Learned counsel for the assessee submitted that the case laws of Sundram Finance Limited has also been considered by the Lucknow Bench of the Tribunal in the case of Risha Tour and Travels vs. Income Tax Officer in I.T.A. No.606/Lkw/2018 vide order dated 23/01/2020 and after considering this decision, the issue has been decided in favour of the assessee and therefore, it was prayed that the order of learned CIT(A) be upheld.

5. We have perused the case records and heard the rival contentions and as apparent from notices 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 issued for the assessment year 2002-03, which is

similar in all the assessment years, has been made part of this order, which is as under:

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11/02/08

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1961 को धारा 271 के अन्तर्गत धारा 274 के अन्तर्गत

UNDER SECTION 274 READ WITH SECTION 271 OF
THE INCOME TAX ACT, 1961

आयकर कार्यालय,
Income-tax Office,
DC-27-B-IV
WCO

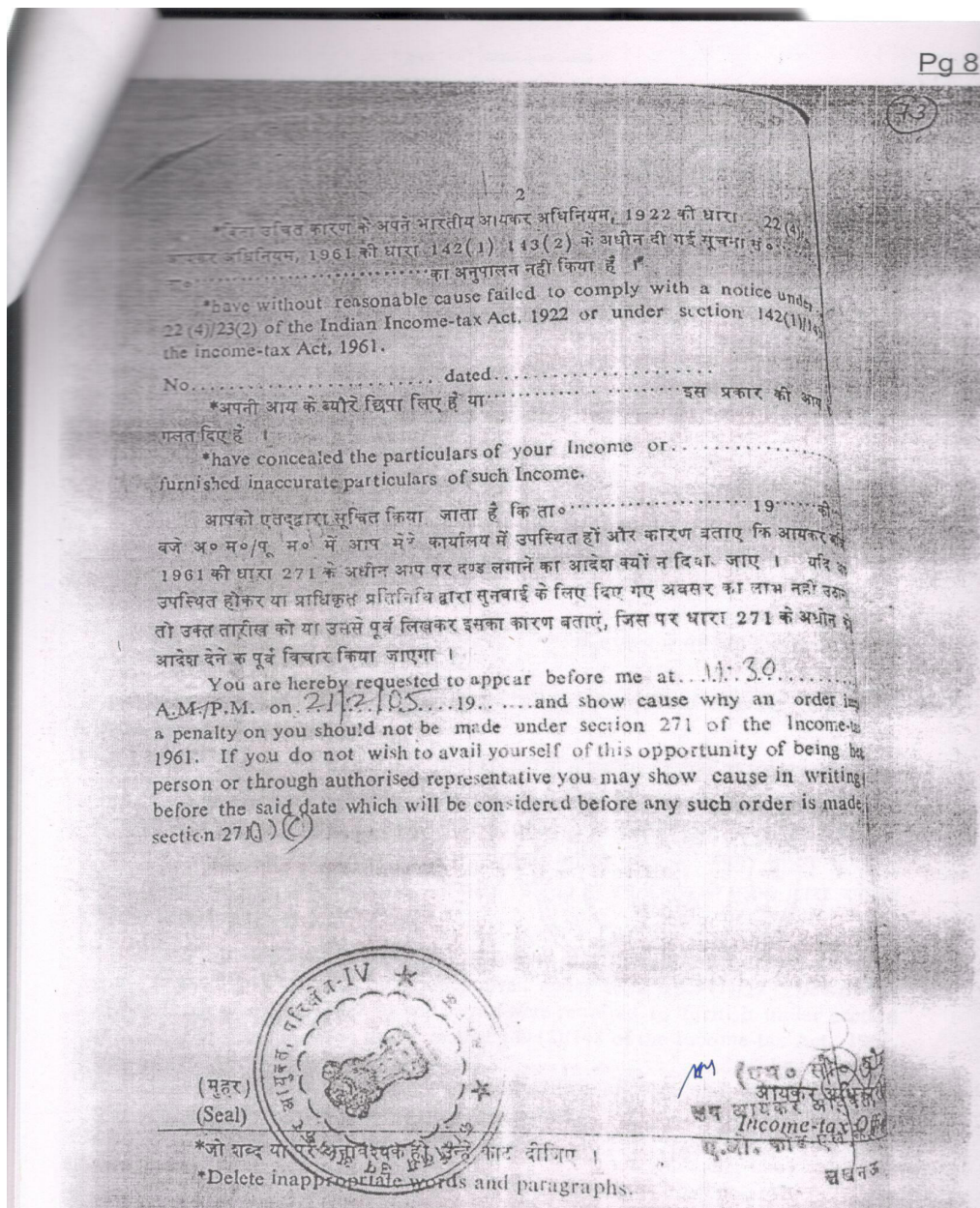
1/S Scooter India Hotel,
Sarojini Nagar,
New Delhi.

दिनांक
Date: 24.1.05.....

कि कर निर्धारण वर्ष..... के सम्बन्ध में मेरे यहाँ होत वाली फार्वाई
प्रति प्रतीत होता है कि आपने :—
thereas in the course of proceedings before me for the assessment year 22-03
to me that you :—

उचित कारण के वह आय विवरणी नहीं दी है जो आपको भारतीय आयकर अधिनियम,
1922(1)/22(2)/34 के अधीन दी गई सूचना के अनुसार देनी थी या जो आपको धारा 139(1)
या आयकर अधिनियम, 1961 की धारा 139(2)/148 के अधीन दी गई सूचना से
..... ता..... अनुसार दाखिल करने की अथवा उचित कारण के
से दिए गए समय के अन्दर और उक्त धारा 139(1) या इस प्रकार की सूचना द्वारा अपेक्षित
विवरण नहीं दी है।

..... or have without
reasonable cause failed to furnish me return of income which
is required to furnish by a notice given under section 22 (1)/22 (2)/34 of the
Income-tax Act, 1922 or which you were required to furnish under section
139 (2)/148 of the Income-tax Act, 1961,
..... dated..... or have without
reasonable cause failed to furnish it within the time allowed and the manner re-
quired by the said section 139(1) or by such notice.



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 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. Such legal position has been considered by Hon'ble Supreme Court and by various High Courts as relied on by Learned counsel for the assessee.

- (1) In 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) In 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) In 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) In 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 reliance placed by Learned D. R. on the case of Dharmendra Textile Processors is misplaced as in that case the penalty was imposed under the Central Excise Act for non payment of duty and Hon'ble court nowhere considered the issue of validity of notice u/s 271(1)(c) of the Act. The Agra Bench of the Tribunal in the case of Sachin Arora (supra)

has considered this case law and has dealt with similar arguments of the Department from para 37 to 39, which for the sake of completeness are reproduced below:

37. In "Dilip N. Shroff Vs. JCIT", 291 ITR 519 (SC), it has been held that section 271(1)(c) of the Act is in two parts. Whereas the first part refers to concealment of income, the second part refers to furnishing of inaccurate particulars thereof. 'Concealment of income' and 'furnishing of inaccurate particulars' are different.

38. In "Ashok Pai vs. CIT", 292 ITR 11 (SC), the Hon'ble Supreme Court has held that:

"Concealment of income' and 'furnishing of inaccurate particulars' carry different connotations. Concealment refers to deliberate act on the part of the assessee. A mere omission or negligence would not constitute a deliberate act of suppressio veri or suggestio falsi."(Para 22).

39. In "CIT vs. Reliance Petroproducts (P) Ltd.", 322 ITR 158 (SC), the Hon'ble Supreme Court has clarified as follows:

".....It was only on the point of mens rea that the judgment in 'Dilip N. Shroff v. Joint CIT' was upset. In Union of India v. 'Dharmendra Textile Processors' after quoting from section 271 extensively and also considering section 271(1) (c), the Court came to the conclusion that since section 271(1) (c) 26 indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing return, there was not necessity of mens rea. The basic reason why decision in 'Dilip N Shroff v. Joint CIT' was overruled by this Court in 'Union of India v. Dharmendra Textile Processors' was that according to this Court the effect and difference between section 271(1) (c) and section 276C of the Act was lost sight of in the case of 'Dilip N Shroff v. Joint CIT'. However, it must be pointed out that in 'Union of India v. Dharmendra Textile processors', no fault was found with the reasoning in

the decision in 'Dilip N. Shroff v. Joint CIT', where the court explained the meaning of the terms conceal and inaccurate. It was only the ultimate inference in 'Dilip N. Shroff v. Joint CIT' to the effect that mens rea was an essential ingredient for the penalty under section 271(1) (c) that the decision in 'Dilip N. Shroff v. Joint CIT' was overruled."

The Hon'ble Tribunal has quoted the judgment of Reliance Petroproducts (P) Ltd (supra) wherein the Hon'ble Supreme Court has clarified as to why the judgment in the case of Dilip N. Shroff was overruled in UOI and Dharmendra Textile Processors. Therefore, the reliance placed by Learned D. R. on this case law will not help the Revenue. Similarly the reliance placed by Learned D. R. on the case of Sundram Finance of Hon'ble Madras High Court will not help the Revenue as the Lucknow Bench in the case of Risha Tour and Travels (supra) has also dealt with this case law and after considering the case law has decided the issue in favour of the assessee by holding as under:

"4. The Id. D.R., on the other hand, placing reliance on the orders of the authorities below, submitted that even assuming that there was defect in the notice, it had caused no prejudice to ITA No.606/LKW/2018 Page 3 of 8 the assessee and the assessee clearly understood what was the purport and import of the notice issued under section 274 read with section 271 of the Act. For this proposition, he placed reliance on the judgment of the Hon'ble Madras High Court, delivered on 11/4/2018, in 'M/s Sundaram Finance Ltd. vs. ACIT' in T.C. (Appeal) Nos.876 and 877 of 2008 and submitted that the Id. CIT(A) has rightly upheld the penalty levied under section 271(1)(c) of the Act and dismissed the appeal of the assessee.

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

Office of the
Income Tax Officer-2(3),
Room No.323, 3rd Floor,
Aayakar Bhawan,
16/69 Civil Lines,
Kanpur (U.P.) -208001



Telephone No.0512-2332358
e-mail Kanpur.ito1.2.3@incometax.in
Mobile No.07599102958

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

F.No.ITO-2(3)/KNP/271(1)(c)/2014-15/

Dated:08.12.2016

To

M/s. Risha Tour and Travels,
111/51, Ashok Nagar,
Kanpur.

Sir,

Whereas in course of proceedings before me for the assessment year 2014-15,
appears to me 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 22(1)/22(2)/34 of the India income act, 1922 or which you were required to furnish under section 139(1) or by notice given under section 139(2)/148 of the Income Tax Act, 1961, No. date or have without reasonable cause failed to furnish it within the time allowed as the manner required by the said section 139(1) or by such notice.~~

~~*have without reasonable cause failed to comply with notice u/s 142(i) of Income Tax Act, 1961 dated 14.10.2011.~~

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

~~*have not maintained books of account and other documents.~~

You are hereby requested to appear before me at Room No. 323, 3rd Floor, 16/69 Aayakar Bhawan, Civil Lines, Kanpur on 23.12.2016 and show-cause why an order imposing penalty on you should not be made under section 271(1)(c) 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(1)(c) of the Income Tax Act, 1961.

Kunal Srivastava
(Kunal Srivastava)
Income Tax Officer-2(3)
Kanpur

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. Remarkably, even in the

assessment order, the Assessing Officer has observed as follows, in this regard:

".....Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 is being initiated against the assessee in assessment year 2014-15 separately for concealment of particulars of income or furnishing inaccurate particulars of income."

Thus, even in the assessment order, the specific charge for the proposed levy of penalty has not been delineated.

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 the Division Bench of the Hon'ble Karnataka High Court in the case of 'CIT and Another vs. Manjunath Cotton & Ginning Factory' [2013] 359 ITR 565 (Karn.), 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 the 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 nonstriking 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 'M/s Sundaram Finance Ltd. vs. ACIT' (supra), the judgment of the Hon'ble Madras High Court, on which reliance has been placed by the Id. D.R., their Lordships, dismissing the appeal of the assessee, held as under:

"16. We have perused the notices and we find that the relevant columns have been marked, more particularly, when the case against the assessee is that they have concealed particulars of income and furnished inaccurate particulars of income. Therefore, the contention raised by the assessee is liable to be rejected on facts. That apart, this issue can never be a question of law in the assessee's case, as it is purely a question of fact. Apart from that, the assessee had at no earlier point of time raised the plea that on account of a defect in the notice, they were put to prejudice. All violations will not result in nullifying the orders passed by statutory authorities. If the case of the assessee is that they have been put to prejudice and principles of natural justice were violated on account of not being able to submit an effective reply, it would be a

different matter. This was never the plea of the assessee either before the Assessing Officer or before the first Appellate Authority or before the Tribunal or before this Court when the Tax Case Appeals were filed and it was only after 10 years, when the appeals were listed for final hearing, this issue is sought to be raised. Thus on facts, we could safely conclude that even assuming that there was defect in the notice, it had caused no prejudice to the assessee and the assessee clearly understood what was the purport and import of notice issued under section 274 r/w. section 271 of the Act. Therefore, principles of natural justice cannot be read in abstract and the assessee, being a limited company, having wide network in various financial services, should definitely be precluded from raising such a plea at this belated stage."

12. It is seen that the Hon'ble Madras High Court in 'M/s Sundaram Finance Ltd. vs. ACIT' (supra) nowhere disagreed with the view taken by the Hon'ble Karnataka High Court in 'CIT and Another vs. Manjunath Cotton & Ginning Factory' (supra). Rather, the matter was decided on the facts of the case, holding, inter alia, that the case of the Revenue against the assessee was that of concealment of income as well as that of furnishing of inaccurate particulars of income. Therefore, 'Sundaram Finance' (supra) is of no aid to the Revenue.

13. Moreover, in the present case, as against that in 'M/s Sundaram Finance Ltd. vs. ACIT' (supra), this issue had been raised by the assessee before the Id. CIT(A), and it has also been raised before us, contending that prejudice has been caused to the assessee and the charge against the assessee in the assessment order as well as in the penalty notice is nebulous and the assessee has remained unable to understand the purport and import of the notice issued under section 274 read with 271 of the Act. Therefore, the principles of natural justice have been flagrantly violated.

14. In view of the above, we hold 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. ITA No.606/LKW/2018 Page 8 of 8 Accordingly, the penalty is deleted and the appeal of the assessee is allowed."

8. In the present cases, unlike in the case of Sundram Finance Ltd., the assessee has taken this argument before learned CIT(A) and before us also whereas in Sundram Finance Ltd., the issue was raised for the first time before Hon'ble Supreme Court therefore, this case law is distinguishable from the facts of the present cases and therefore, is not applicable.

9. In view of these facts and circumstances and in view of the judicial precedents relied on by Learned counsel for the assessee, we do not find any infirmity in the order of learned CIT(A) therefore, the appeal filed by the Revenue are dismissed.

10. Since the appeals of the Revenue have been dismissed, the Cross Objections filed by the assessee have become infructuous and are dismissed.

11. In the result, all the appeals of the Revenue and Cross Objections of the assessee are dismissed.

(Order pronounced in the open court on 02/11/2021)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:02/11/2021
*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

Assistant Registrar