

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH: AMRITSAR
BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A No. 433/ASR/2019
(ASSESSMENT YEAR: 2016-17)**

Smt. Sanjana Mittal H. No. 15-17, Street No. 4, Ferozepur Cantt. [PAN:AJWPM1931B] (Assessee)	Vs.	Dy. Commissioner of Income Tax, Central Circle-1, Jalandhar (Revenue)
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**I.T.A No. 434/ASR/2019
(ASSESSMENT YEAR: 2016-17)**

Sh. Sushil Mittal H. No. 15-17, Street No. 4, Ferozepur Cantt. [PAN: ABXPM7158H] (Assessee)	Vs.	Dy. Commissioner of Income Tax, Central Circle-1, Jalandhar (Revenue)
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**I.T.A No. 435/ASR/2019
(ASSESSMENT YEAR: 2016-17)**

Sh. Krishan Kumar Mittal H. No. 15-17, Street No. 4, Ferozepur Cantt. [PAN: ABYPK 5307M] (Assessee)	Vs.	Dy. Commissioner of Income Tax, Central Circle-1, Jalandhar (Revenue)
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Assessee by	Sh. AshraySarna, C. A.
Revenue by	Sh. Inderjit Singh, CIT-D.R.
Date of Hearing	01.12.2021
Date of Pronouncement	20.12.2021

ORDER

PerBench:

These appeals are filed by the assessee feeling aggrieved by the order of Ld. CIT(A)-5, Ludhiana dated 09.05.2019 for Assessment Year 2016-17.

2. The assessee has raised the following grounds of appeal:

- “1. That the order passed by the Hon’ble CIT(A) dated 09.05.2019 is against the law and facts of the case.
2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order u/s 271AAB and without complying with the mandatory conditions u/s 271 as envisaged under the Income Tax Act, 1961.
3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order u/s 271AAB without considering the submissions of the assessee and without observing the principles of natural justice.
4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

3. As the issue raised in all these appeals are common and pertaining to same group these were heard together and are being disposed of by way of this common order for the sake of convenience and brevity. For adjudication purposes we will take up the facts in the case of Sanjana Mittal ITA No. 433/Asr/2019.

4. Brief facts of the case are that the assessee is an individual and is part of the Bhagwati Group of Ferozepur. Search action u/s 132 of the Act was carried out on 11.02.2016. Various discrepancies were noticed. One of the key person namely Sameer Mittal surrendered undisclosed income of Rs. 20 crore which was bifurcated under 9 names appearing at page 24 of the paper book.

5. For the year of search i.e., AY 2016-17, the assessee filed return of income on 1.10.2016 declaring income of Rs.43,17,590/- which included the surrendered income of Rs. 40 lacs stated in the statement given by Sameer Mittal. Return income was accepted however penalty proceedings u/s 271AAB(1) of the Act was initiated and subsequently on 26.06.2018 order levying penalty u/s 271AAB(1) of the Act finalized computing penalty at the rate of 20% of the surrendered income, i.e., 20% of Rs.40 lacs computing the penalty at Rs.8 lacs.

6. Aggrieved assessee preferred appeal before Ld. CIT(A) but failed to succeed. Now the assessee is in appeal before this Tribunal.

7. At the outset, Ld. counsel for the assessee submitted that the issue raised of the instant three appeals are squarely covered by the decision of Coordinated Bench Kolkata in the case of *Smt. RashmiJalan v. Asst. CIT in ITA No. 32/Kol/2020 order dated 30th September, 2020*. It was stated by Ld. Counsel for the assessee that following issues raised in the instant appeal are covered by these decisions:-


(a) Notice issued u/s 271AAB(1) r.w.s. 274 of the Act is defective as no specific charge is levelled against the assessee (b) Ld. AO initiated the proceedings for levying penalty u/s 271AAB(c) of the Act but finally levied the penalty u/s 271AAB(1) (3) No penalty should have levied u/s 271AAB(d) of the Act as the statement of the assessee was not recorded u/s 132(4) of the Act (4) Nowhere in the assessment order it is stated that the assessee has surrendered and disclosed

income and that the assessed income of Rs.43,17,590/- constitutes undisclosed income.

8. Per contra, the Ld. Departmental Representative vehemently argued and supporting the order of Ld. CIT(A) both the lower authorities.

9. We have heard the rival contention and perused the record placed before us. In the instant three appeals common issue has been raised and challenging the finding of the Ld. CIT(A) confirming the levy of penalty u/s 271AAB of the Act. On perusal of the record, we find that in the course of search surrender was made by one of the key person Mr. Sameer Mittal and this surrender included at Rs.40 lacs on behalf of Sanjana Mitta, Rs. 70 lacs on behalf of Sushil Mittal and Rs. 70 lacs on behalf of Krishan Kumar Mittal. The respective income was offered in the Income Tax returns in the return of income pertaining to years of search, i.e., AY 2016-17 as the date of search is 11.02.2016. In the assessment order Ld. AO has not made any reference that these assessees have made a surrendere of undisclosed income and accepted the returned income as assessed income. Penalty proceedings were initiated under clause (a) of section 271AAB(1) of the Act which provides for levying penalty at the rate of 10% of the surrendered income. Thereafter following show cause notice was issued to the assessee. Similar notices were issued to the other assessees.

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भारत सरकार/GOVERNMENT OF INDIA
कार्यालय उप आयकर आयुक्त, केन्द्रीय वृत्त-१, आयतन टावर, सिविल लाइन्स, जालंधर- १४४००१
Office of the Deputy Commissioner of Income Tax, Central Circle-I,
Aytan Tower, Civil Lines, Near SBI, Jalandhar (Punjab)- 144001
दूरभाष/Phone: 0181-2235285/Fax:2233263; ईमेल/Email: jalandhar.dcit.cen1@incometax.gov.in

प.सं/No.: CC-I/JAL/ASSTT/2017-18/ 2178 दिनांक/Dated: 29.12.2017

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

सेवामें/To
Smt. Sanjana Mittal,
House No. 15-17, Street No. 4,
Ferozpur Cantt.
(PAN: AJWPM1931)

Sir,

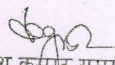
Whereas during the course of assessment proceedings before me for the assessment year 2016-17, it has been noticed,



a. that you have declared undisclosed income u/s 132(4) of the Income Tax Act, 1961 within the meaning of section 271AAB of the Income Tax Act, 1961.

b. that you have declared undisclosed income in the return which was not declared u/s 132(4) of the Income Tax Act, 1961.

c. that you have undisclosed income which was neither declared u/s 132(4) of the Income Tax Act, 1961 nor shown in the Income Tax Return.

You are hereby requested to appear before me at 11.00 A.M. on 02.02.2018 and show cause why an order imposing a penalty on you should not be made under section 271AAB of the 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 271AAB.


(दिनेश कुमार गुप्ता)
उप आयकर आयुक्त (केन्द्रीय वृत्त-I)
जालंधर

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10. From the perusal of the above notice, we find that there is no specific charge levelled against the assessee. Section 271AAB(1) of the Act provides for three

types of penalties to be calculated at the rate of 10%, 20% & 30%. We also find that Ld. AO initiated the penalty under clause (a) of section 271AAB(1) of the Act but finally levied the penalty under clause (b) of 271AAB(1) of the Act and the reason for doing so as stated in the penalty order is that the undisclosed income was not admitted by the assessee in the statement recorded u/s 132(4) of the Act, secondly the manner of deriving such income was neither explained by her and nor by her husband and thirdly the manner of earning undisclosed income was not substantiated with detailed correlation or evidence. In our view this finding of the Assessing Officer has no merit because the search team never recorded the statement of the assessee. The finding of the Assessing Officer would have been applicable only if the statement of the assessee(s) had been recorded section 132(4) of the Act and she had denied to offer any such undisclosed income or did not give the details of the source of the earning of such income. Since no such statement was taken one cannot for see that the assessee would have not surrendered the undisclosed income or had not given proper explanation to substantiate the manner of earning undisclosed income.

11. Even otherwise in our considered view the impugned penalty is liable to be deleted for the reason that the penalty notice issued is defective as no specific charge was leveled against the assessee and for this proposition, we rely on the decision of the Coordinate Bench Kolkata in the case of *Smt. Rashmi Jalan (supra)*

which is squarely applicable on the facts issue raised in the instant appeal.

Relevant extract of this order is reproduced below:

"8. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:

"9. The notice issued u/s 274 r.w.s. 271 on 31/03/2015, by the Assessing Officer has been extracted by us above. The charge in this notice is not specified.

The Jaipur Bench of the Tribunal in the case of Padam Chand Pungliya (supra) held as follows:-

"We further note that in the case in hand, the AO in the show cause notice has neither specified the grounds and default on the part of the assessee nor even specified the undisclosed income on which the penalty was proposed to be levied. For ready reference we reproduce the show cause notices issued by the AO under section 274 read with section 271AAB on 30th March, 2016 and 16th August, 2016 as under:--

"No. ACIT/CC-1/JPR/2015-16

Dated: 30.03.2016.

PENALTY NOTICE UNDER SECTION 274 READ WITH SECTION 271AAB OF THE INCOME TAX ACT, 1961.

PAN - ABDPP 7196A

To,

Sh. Padam Chand Pungalia,

2372, MSB Ka Rasta, Johari Bazar,

Jaipur.

Whereas in the course of assessment proceedings before me for the A.Y. 2014-15, it appears to me that as per sections 274 and 275 read with section 271AAB of the Income-tax Act you are liable for penalty on assessed undisclosed income.

You are hereby requested to appear before me at my office Room No. 103 (NA), N.C.R.B., Jaipur at 11.00 A.M. on 28.04.2016 and show cause why an order imposing penalty on you should not be made u/s 271AAB r.w.s. 274 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 reply to show cause in writing on or before the said date which will be considered before any such order is made.

Yours faithfully,

*Sd/-
(Sushil Kumar Kulhari)
Asstt. Commissioner of Income-tax,
Central Circle-1, Jaipur.*

"No. ACIT/CC-1/JPR/2016-17/928

Dated: 16.08.2016.

PENALTY NOTICE UNDER SECTION 274 READ WITH SECTION 271AAB OF THE INCOME TAX ACT, 1961.

PAN - ABDPP 7196A

To,

*Sh. Padam Chand Pungalia,
2372, MSB Ka Rasta, Johari Bazar,
Jaipur.*

Whereas in the course of assessment proceedings before me for the A.Y. 2014-15, it appears to me that as per sections 274 and 275 read with section 271AAB of the Income-tax Act you are liable for penalty on assessed undisclosed income.

You are hereby requested to appear before me at my office Room No. 103 (NA), N.C.R.B., Jaipur at 11.00 A.M. on 25.08.2016 and show cause why an order imposing penalty on you should not be made u/s 271AAB r.w.s. 274 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 reply to show cause in writing on or before the said date which will be considered before any such order is made.

Yours faithfully,

*Sd/-
(DevangiSwarnkar)
Asstt. Commissioner of Income-tax,
Central Circle-1, Jaipur.'*

Thus it is clear that both the show cause notices issued by the AO for initiation of penalty proceedings under section 271AAB are very vague and silent about the default of the assessee and further the amount of undisclosed income on which the penalty was proposed to be levied. Even the Hon'ble Jurisdictional High Court in case of Shevata

Construction Co. (P.) Ltd in DBIT Appeal No. 534/2008 dated 06.12.2016 has concurred with the view taken by Hon'ble Karnataka High Court in case of Manjunatha Cotton & Ginning Factory (supra) which was subsequently upheld by the Hon'ble Supreme Court by dismissing the SLP filed by the revenue in the case of SSA's Emerald Meadows (supra). Accordingly, following the decision of the Coordinate Bench as well as Hon'ble Jurisdictional High Court, this issue is decided in favour of the assessee by holding that the initiation of penalty is not valid and consequently the order passed under section 271AAB is not sustainable and liable to be quashed."

10. Similarly, the Indore Bench of the ITAT in the case of Shri Ravi Mathur (supra) has held as follows:-

"7. As regards the validity of notice under section 274 for want of specifying the ground and default, we find that when the basic condition of the undisclosed income not recorded in the books of accounts does not exist, then the same has to be specified by the AO in the show cause notice and further the AO is required to give a finding while imposing the penalty under section 271AAB. Even if the AO is satisfied and come to the conclusion that the assessee has not recorded the undisclosed income in the books of accounts or in the other documents / record maintained in normal course relating to specified previous year, the show cause notice shall also specify the default committed by the assessee to attract the penalty @ 10% or 20% or 30% of the undisclosed income. There is no dispute that the AO has not specified the default and charge against the assessee which necessitated the levy of penalty under section 271AAB of the Act. Consequently, the assessee was not given an opportunity to explain his case for specific default attracting the levy of penalty in terms of clauses (a) to (c) of section 271AAB(1) of the Act. The Chennai Bench of the Tribunal in the case of DCIT vs. Shri R. Elanaovan (supra) at pages 7 to 10 has held as under:-

" It is clear from the Sub Section (3) of Section 271 AAB that Sections 274 and Section 275 of the Act shall, so far as may be, apply. Sub Section (1) of Section 274 of the Act mandates that order imposing penalty has to be imposed only after hearing the assessee or giving a assessee opportunity of hearing. Opportunity that is to be given to the assessee should be a meaningful one and not a farce. Notice issued to the assessee reproduced (supra), does not show whether penalty proceedings were initiated for concealment of income or for furnishing inaccurate particulars of income or for having undisclosed income within the meaning of Section 271AAB of the Act. Notice in our opinion was vague. Hon'ble Karnataka High Court in the case of SSA's Emerald Meadows (supra) relying in its own judgment in the case of Manjunatha Cotton and Ginning Factory (supra) had held as under:-

'2. This appeal has been filed raising the following substantial questions of law:

(1) Whether, omission if assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or

that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.s. 271(1)(c) is bad in law and invalid despite the amendment of Section 271(1B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued under Section 274 without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?

3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of CIT vs. Manjunatha Cotton and Ginning Factory (2013) 359ITR 565.

4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed".

In the earlier case of Manjunatha Cotton and Ginning Factory (supra) their lordship had observed as under:-

"Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in section 271 are 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 are offended. On the basis of such proceedings, no penalty could be imposed on the assessee;) taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law; penalty proceedings are distinct from the assessment proceedings : though proceedings for imposition of penalty emanate from proceedings of assessment, they are independent and a separate aspect of the proceedings;

The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the proceedings on the merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared invalid in the penalty proceedings."

View taken by the Hon'ble Karnataka High Court in the above judgment was indirectly affirmed by the Hon'ble Apex Court, when it dismissed an SLP filed by the Revenue against the judgment in the case of SSA's Emerald Meadows (supra), specifically observing that there was no merits in the petition filed by the Revenue. Considering the above cited judgments, we hold that the notice issued u/s.274 r.w.s. 271AAB of the Act, reproduced by us at para 5 above was not valid. Ex-consequenti, the penalty order is set aside.

6. Since we have set aside the penalty order for the impugned assessment year, the appeal filed by the Revenue has become infructuous."

In view of the decision of the Chennai Bench (supra), the show cause notice issued by the AO in the case of the assessee is not sustainable."

10.1. Similar are the decisions in the other case-law relied upon by the assessee.

11. Applying the propositions of law laid down in these case-law to the facts of the case, we have no other alternative but to hold that the penalty in question is bad in law as the showcause notice issued by the Assessing Officer does not specify the charge/s against the assessee for levy of penalty, as required by law. Thus, on this ground, the penalty is quashed.

12. Even otherwise, Section 271AAB of the Act, contemplates imposition of a penalty pursuant to the disclosure of income in statement recorded u/s 132(4) of the Act by the assessee. It is an admitted fact that no such statement has been recorded from the assessee. Thus, on this ground also, the levy of penalty fails. Nowhere in the assessment order it is stated that undisclosed income has been assessed. The assessment was made u/s. 143(3) of the Act and the returned income was accepted. Thus, for all these reasons, we quash the penalty levied u/s. AAB of the Act and allow this appeal of the assesseee."

12. On perusal of the finding given in the above mentioned decision and the facts and issues adjudicated therein, we find that the same is squarely applicable on the common issue raised in the instant appeals and Ld. Departmental Representative failed to controvert by bringing any binding precedings in its

favour. We are therefore of the considered view that the penalty levied u/s 271AAB(1) of the Act in the instant appeal deserves to be deleted as the penalty in question is bad in law since the show cause notice issued by the Assessing Officer does not specify the charges for levy of penalty as required by law. Since we have deleted the impugned penalties allowing the legal ground holding the notice u/s 274 of the Act as defective and bad in law, remaining grounds becomes merely academic. Thus all the grounds raised by the assessee(s) in the instant appeal are allowed as per terms indicated above.

13. In the result, all the three appeals bearing ITANo. 433 to 435/ASR/2019 at the instant of assessee(s) are allowed.

Order pronounced in the open court on 20/12/2021.

**Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER**

Dated 20/12/2021

GP/Sr. P.S.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

True Copy
By Order