

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.8059/Del/2018  
Assessment Year: 2009-10

Rakesh Kumar Pawa,  
E-21, Park Lane,  
Kalindi Colony,  
New Delhi.

Vs ACIT,  
Circle-18,  
New Delhi.

PAN: AGRPP6439R

(Appellant)

(Respondent)

Assessee by	:	Shri Abhishek Mathur, CA
Revenue by	:	Shri Sanjiv Mahajan, Sr. DR
Date of Hearing	:	27.01.2022
Date of Pronouncement	:	10.02.2022

ORDER

This appeal filed by the assessee is directed against the order of the CIT(A)-16, New Delhi, dated 31<sup>st</sup> October, 2018 relating to AY 2009-10.

2. Levy of penalty of Rs.1,71,212/- by the AO u/s 271(1)(c) of the IT Act which has been confirmed by the CIT(A) is the only issue raised by the assessee in the grounds of appeal.

3. Facts of the case, in brief, are that the assessee is an individual and had filed his return of income on 29<sup>th</sup> March, 2012, declaring a loss of Rs.5,01,092/-. A search and seizure and survey operation u/s 132/133A of the IT Act was

conducted by the Investigation Wing in the case of the assessee along with other cases of the Jagat group. In response to the notice u/s 153A, the assessee submitted that the return filed earlier u/s 139(1) should be treated as return filed u/s 153A. The AO completed the assessment u/s 143(3)/153A determining the total income of the assessee at Rs.11,36,640/- wherein he made addition of Rs.2,40,000/- being income from salary and Rs.8,96,639/- being the income surrendered by the assessee. So far as the surrender of above income is concerned, the AO, during the course of assessment proceedings, noted that the assessee has taken a loan from Money Line Credit, an NBFC company, amounting to Rs.1,53,00,000/- on which interest of Rs.10,76,689/- has been paid. Although the net disbursement of loan to M/s Pawa Associates out of total borrowings was only of Rs.1,27,41,453/-, however, proportionate interest amounting to Rs.8,96,639/- was claimed as expenses. The AO, therefore, asked the assessee to explain as to why proportionate interest should not be disallowed and added back to the total income of the assessee. The assessee surrendered the above amount and offered the same for taxation. The AO accordingly made an addition of the same.

4. Subsequently, the AO initiated penalty proceedings u/s 271(1)(c). Rejecting the various explanations given by the assessee and distinguishing the various decisions cited before him, the AO levied penalty of Rs.1,79,212/- being 100% of the tax sought to be evaded.

5. In appeal, the Id.CIT(A) confirmed the penalty so levied by the AO.
6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.
7. The Id. Counsel for the assessee, referring to page 13 of the paper book, drew the attention of the notice issued u/s 274 r.w. section 271(1)(c) of the Act dated 6<sup>th</sup> March, 2017 and submitted that the inappropriate words have not been struck off and, therefore, it is not discernible as to under which limb of the provisions the AO has initiated penalty proceedings u/s 271(1)(c) of the Act. Referring to the notice u/s 274 r.w. section 271(1)(c) dated 28<sup>th</sup> March, 2013, the Id. Counsel for the assessee drew the attention of the Bench to the first notice issued by the AO for levy of penalty wherein also the inappropriate words were not struck off. Referring to the copy of the assessment order, the Id. Counsel submitted that the AO, after making the addition of Rs.8,96,639/- has, while recording his satisfaction, has mentioned that "satisfaction is hereby recorded that the assessee has concealed the particulars of income or has furnished inaccurate particulars of income." He accordingly submitted that both at the time of recording his satisfaction as well as at the time of issuing penalty notice, the AO was not sure as to under which limb, he is initiating the penalty proceedings i.e., for concealment of particulars of income or for furnishing of inaccurate particulars. Referring to the decision of the Honøble Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory, reported in 359 ITR 565, he

submitted that the Honøble Karnataka High Court has held that notice u/s 274 of the Act should specifically state the grounds mentioned in notice u/s 271(1)(c) i.e., whether it is for concealment of income or for furnishing of inaccurate particulars of income. Sending printed format where all the grounds mentioned in section 271 are mentioned would not satisfy the requirements of law, the assessee should know the grounds which he has to mention specifically, otherwise, the principles of natural justice are offended. On the basis of such proceedings, no penalty could be imposed on the assessee.

8. He submitted that the above decision of the Honøble Karnataka High Court was challenged by the Revenue and the Honøble Supreme Court has dismissed the SLP filed by the Revenue. He submitted that similar view has been held by the Honøble Karnataka High Court in the case of SSA Emerald Meadows and the SLP filed by the Revenue was also dismissed by the Honøble Supreme Court. Referring to the decision of the Honøble Gujarat High Court in the case of New Sorathia Engineering Co. vs. CIT, reported in 282 ITR 642, he submitted that the Honøble High Court has held that the order of penalty must clearly state whether it is for concealment or for furnishing inappropriate particulars. Order stating penalty for one of the offences was not valid. The Honøble Court has held that it is incumbent upon the AO to state whether penalty was being levied for concealment of particulars of income by the assessee or whether any inaccurate particulars of income has been furnished by the assessee. Referring to various other decisions,

he submitted that under identical circumstances when the inappropriate words in penalty notice are not struck off, the coordinate Benches have held that the penalty proceedings initiated by the AO are not in accordance with the law and accordingly, they have been quashed. He accordingly submitted that since the AO, in the instant case, has not specified under which limb of the provisions of section 271(1)(c) penalty proceedings are initiated, therefore, such notice being not in accordance with the law, the penalty levied by the AO and sustained by the CIT(A) should be cancelled.

8.1 So far as the merit of the case is concerned, the Id. Counsel submitted that the assessee has given all details and there is no concealment at all. He submitted that had the assessee claimed the interest in the hands of M/s Pawa Associates, i.e., the partnership firm, then, the profit of the firm would have come down and the assessee being a partner, his tax liability would also have been reduced and, thus, by wrongly not claiming the interest in the hands of the partnership firm the assessee has, in fact, suffered higher taxation and there is no loss to the Revenue. Further, all particulars are given and the assessee, under bona fide belief and without any mala fide intention has claimed the interest expenditure in his individual hand. Therefore, penalty levied by the AO and sustained by the CIT(A) is not justified.

8.2 Referring to the decision of the Honøble Supreme Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd., reported in 322 ITR 158, he submitted that

the Honøble Supreme Court in the said decision has held that a mere making of the claim which is not sustainable in law by itself will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars. Relying on various other decisions, he submitted that the penalty levied by the AO and sustained by the CIT(A) should be deleted.

9. The Id. DR, on the other hand, heavily relied on the order of the CIT(A). Referring to the order of the CIT(A), the Id. DR submitted that the Id.CIT(A) has clearly and categorically mentioned how the assessee has surrendered the income because of the detection by the AO. Had the AO not picked up the case for scrutiny, the assessee would not have voluntarily come forward to surrender the income. He accordingly submitted that the order of the CIT(A) being in accordance with the law should be upheld.

10. I have heard the rival arguments made by both the sides and perused the record. I find, the AO, in the instant case, levied penalty of Rs.1,79,212/- u/s 271(1)(c) of the IT Act on account of the surrender of Rs.8,96,639/- by the assessee being the proportionate interest on the loan of Rs.1,27,41,453/- diverted by the assessee from the loan of Rs.1,53,00,000/- obtained by it to his partnership firm. It is the submission of the Id. Counsel for the assessee that the penalty notice issued by the AO does not specify as to under which limb of the section the AO has initiated penalty proceedings i.e., either for concealment of income or for

furnishing inaccurate particulars of income. A perusal of the two notices issued by the AO for initiation of penalty proceedings shows that the AO has not struck off the inappropriate words in the said notice. The first notice issued by the AO dated 28<sup>th</sup> March, 2013 reads as under:-

134

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

Office of the  
Dy. Commissioner of Income Tax  
Central Circle- 09, New Delhi

Dated :- 28-03-13

To,

Sh. Rakesh Kr. Agarwal  
E-21, Park Lane  
Kalindi Colony, N-Delhi

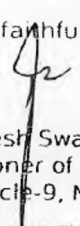
Where as in the course of proceedings before me for the assessment Year 2009-10 it appears to me that you :-

~~\*have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961, dated \_\_\_\_\_.~~

\*have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5.

You are hereby requested to appear before me at Room No. 357, E-2, ARA Centre, Jhandewalan Extn. New Delhi 11.30. A.M. on 29-04-13 and show cause why an order imposing a 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).


Yours faithfully,




(Sumesh Swani)  
Dy. Commissioner of Income Tax  
Central Circle-9, New Delhi.

(SUMESH SWANI)  
Deputy Commissioner of Income Tax  
Central Circle-9, New Delhi

Seal



From the above, it is seen that the AO has not specified under which limb of the provisions of section 271, he has initiated the penalty proceedings. Similarly, the second notice issued by the AO dated 6<sup>th</sup> March, 2017 reads as under:-



OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX,  
CENTRAL CIRCLE-18, ROOM NO.102, HALL NO.1, 1<sup>ST</sup> FLOOR,  
ARA CENTRE, JHANDEWALAN EXTENSION,  
P.H. No. 011-23593450 NEW DELHI-110055.

*Recd on  
10/3/2017*

F. No. ACIT/CC-18/2016-17/1493 Date: 06.03.2017

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

To,

Shri Rakesh Kumar Pawa  
E-21, Park Lane, Kalindi  
Colony, New Delhi-25

PAN: AGRPP6439R


Where as in the course of proceedings before me for the assessment Year 2009-10 it appears to me that you :-

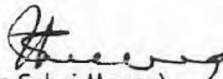
~~\*have without reasonable cause failed to comply with a notice under section 142(1)/143(2) of the Income Tax Act, 1961, dated \_\_\_\_\_~~

\*have concealed the particulars of your income or furnished inaccurate particulars as detailed in the assessment order.

You are hereby requested to appear before me at Room No. 102, E-2, ARA Centre, Jhandewalan Extn. New Delhi 11.30. A.M. on 15.03.2017 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.

Seal



  
(Har Sahai Meena)  
Asstt. Commissioner of Income Tax  
Central Circle-18, New Delhi

11. Even here also, the AO has not specified as to under which limb of section 271(1)(c) of the Act he has initiated the penalty proceedings. Even the assessment order shows that the AO while recording satisfaction has mentioned as under:-

“Satisfaction is hereby recorded that the assessee has concealed the particulars of income or has furnished inaccurate particulars of income. Penalty proceedings u/s 271(1)(c) is initiated on this issue, separately.”

12. A perusal of the two notices as well as the assessment order clearly shows that the AO has not specified under which limb of the provisions of section 271(1)(c) he has initiated the penalty proceedings.

13. The Honøble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra) has held that notice u/s 274 of the Act should specifically state the grounds mentioned under section 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 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. It has been held that taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law. Accordingly, the order of the Tribunal deleting the penalty was upheld and the appeal filed by the Revenue was dismissed. On further appeal, the SLP filed by the Revenue was dismissed by the Honøble Supreme Court. Similar view has been taken in the various other decisions relied on by the Id. Counsel.

14. Since the AO, in the instant case, has not specified under which limb of the provisions of section 271(1)(c) i.e., whether for concealment of income or for furnishing of inaccurate particulars of income he has initiated the penalty proceedings, therefore, such penalty proceedings not being in accordance with the law, cannot be sustained. Accordingly, the penalty levied by the AO and sustained by the CIT(A) is directed to be cancelled. Since the assessee succeeds on this legal ground, the grounds challenging the addition on merit are not being adjudicated being academic in nature.

15. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 10<sup>th</sup> February, 2022.

Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 10<sup>th</sup> February, 2022.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi