



आयकर अपीलीय न्यायाधिकरण, रायपुर न्यायपीठ, रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

(Through Virtual Court at Raipur)

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND

SHRI JAMLAPPA D. BATTULL, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.: 106/BIL/2017  
निर्धारण वर्ष / Assessment Year : 2010-2011

Shri Swapnil Kumar Jain,  
Prop. M/s R.K. Traders, Main Road,  
Akaltara, Dist. Janjgir Champa (C.G.)  
PAN : ADFPJ 1564 J

..... अपीलार्थी / Appellant

**बनाम / V/s**

Income Tax Officer,  
Janjgir Champa, (C.G.)

..... प्रत्यर्थी / Respondent

**द्वारा / Appearances**

Assessee by : Shri R. B. Doshi  
Revenue by : Shri Gitesh Kumar

सुनवाई की तारीख / Date of conclusive Hearing : 08/03/2022  
घोषणा की तारीख / Date of Pronouncement : 01/04/2022

**आदेश / ORDER**

**PER JAMLAPPA D BATTULL, AM;**

The present appeal of the appellant assessee is assailed against the first appellate order of Commissioner of Income Tax-Appeals, Bilaspur [for short "CIT(A)"] dt 29/06/2016 passed u/s 250 of the Income-tax Act,1961 [for short "the Act"] which in turn leapt out of order of penalty [for short "PO"] dt 26/03/2015 passed by the Assessing Officer [for short "AO"] u/s 271(1)(c) of the Act for the assessment year [for short "AY"] 2010-11.



2. In advancing the matter for adjudication, it is essential to reproduce **grounds challenged** by the appellant as under;

*“1. In the facts and circumstances of the case, Ld. CIT(A) erred in confirming the penalty of Rs.40,239/- imposed by the AO. The penalty sustained by the Ld. CIT(A) is not justified.”*

*“2. The appellant reserves the right to add, amend or alter any of the ground/s of appeal.”*

3. Before pulling the facts out of the case, at the outset, it is brought to the notice of the bench that, the present appeal was delayed by five days, Ld. AO through an affidavit filed on record following the principle of **“actori incumbit probatio”** submitted that, as against the order of first appellate authority the appeal before this Tribunal should have been filed by 17/05/2017, whereas it has been filed with a delay of five days on 22/05/2017. The delay was on account of short of payment of appeal fees under genuine and bonafide belief, however on being informed by the registry the shortfall was ameliorated and the appeal is presented immediately on next working day and accordingly prayed for condonation averting that the delay was unintentional and resulted out of confusion. Finding the reasonability and sufficiency in the submission of the appellant substantiating & explaining each day delay and no-objection from the learned departmental representative [for short **“DR”**] when confronted, the bench ad idem, in the light of celebrated decision of Hon’ble Apex Court in **“Collector Land Acquisition Vs MST Katiji and Others”** reported at 167 ITR 5 (SC) and Hon’ble Karnataka High Court in **“CIT Vs ISRO Satellite Centre”** reported at 263 ITR 549 (Kar) and Hon’ble Bombay High Court in **“CIT Vs Velingkar Brothers”** reported at 289 ITR 382 (Bom), condones the delay.



4. **Pithily, the facts of the case are;**

4.1 The appellant assessee is an individual and proprietor of M/s R K Traders, had filed his return of income [for short "ROI/ITR"] for AY 2010-2011 on 22/09/2010 declaring total taxable income of ₹1,88,120/-, wherein the case was selected for scrutiny by issue of notice u/s 143(2) and the assessments was culminated at ₹6,87,966/- by an order u/s 143(3) of the Act. Out of the total addition, an addition of ₹2,51,275/- u/s 69C was made on account of unaccounted purchases surrendered and wherefore the penalty proceedings u/s 271(1)(c) were initiated.

4.2 Ld. AO observing that, the aforesaid quantum order was unsuccessfully challenged by the assessee before the first appellate authority and in the absence of any record suggesting further appeal thereagainst, has concocted the acceptance of quantum by the assessee and by issue of letter dt 22/09/2014 u/s 271(1)(c) of the Act initiated the penalty proceedings and followed by a show cause notice [for short "SCN"] dt 14/01/2015 u/s 274 r.w.s. 271(1)(c) of the Act. Not finding force in assessee's submission, the Ld. AO by an order imposed a penalty of at ₹40,239/- equal to 100% of tax sought to be evaded on the impugned addition u/s 69C.

4.3 Ld. CIT(A) echoing the views of assessing officer confirmed the penalty imposed by Ld AO and aggrieved thereby, the appellant assessee is before us with the grounds assailed at para 2 herein above.

5. During the course of hearing, Ld. AR took us through the relevant facts of the case vis-à-vis paper book filed on record and in support of legal ground, it is submitted that, the **initiation as well imposition of penalty suffers from voice of non-application of mind** of the Ld. AO and therefore penalty deserves to be deleted. Insofar the merits

of the case concern, Ld. AR contended that, during the course of assessment proceeding the assessee consequent to disallowance of VAT, nolo contendere the disallowance of purchases in the absence of proper quantity reconciliation, factually there was complete absentia of clear findings so has to attract the penal provisions. Au contraire, the Ld. DR supported the orders of the lower tax authority and the conviction of Ld. CIT(A).

6. After hearing to the rival contentions of both the parties; perused material placed on records and duly considered the facts of the case in the light of settled legal position and the case laws relied upon by the appellant assessee as well the respondent revenue.

7. It is apt to quote relevant text of the provision to arrive at the applicability in the instant case before us;

*271. Failure to furnish returns, comply with notices, concealment of income, etc.*

*(1) If the [Assessing] Officer or the [Commissioner (Appeals)] [or the Commissioner] in the course of any proceedings under this Act, is satisfied that any person —*

*(a) . . . . .*

*(b) . . . . .*

*(c) has concealed the particulars of his income or [\* \* \*] furnished inaccurate particulars of [such income, or]*

*(d) . . . . .*

*he may direct that such person shall pay by way of penalty,—*

*(i) . . . . .*

*(ii) . . . . .*

*(iii) in the cases referred to in clause (c) [or clause (d)], [in addition to tax, if any, payable] by him, a sum which shall not be less than, but which shall not exceed [three times], the amount of tax sought to be evaded by reason of the concealment of particulars of his income or the furnishing of inaccurate particulars of such income*

7.1 One can observe, that the provisions of section 271(1)(c) of the Act lex lata, postulates that, penalty prescribed therein can only be levied on the occurrence of either of the situation, namely either for **concealment of particulars of income** or for



furnishing of inaccurate particulars of such income. It has been judicially well settled by now that, the “concealment of particulars of income” and “furnishing of inaccurate particulars of income” referred into section 271(1)(c) of the Act signifies two distinct connotations, and the said proposition can be witnessed from the judgments of the Hon'ble Supreme Court in the case of “Dilip N Shroff Vs JCIT” reported at 291 ITR 519 (SC), and “Ashok Paid Vs CIT” reported at 292 ITR 11. In the light of aforesaid judicial precedents, it is imperative on the part of Ld. AO to make the assessee aware in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act as to **which one of the two limbs is alleged against** him for the purposes of imposition of penalty and unless it is made aware of any specific charge against him, the proceedings shall be violative of the principles of natural justice inasmuch as the assessee would not be in a position to put up his necessary defence appropriately.

7.2 One has to appreciate the point being canvassed by the assessee before us, which is based on the tone and drift of the notice issued u/s 274 r.w.s. 271(1)(c) of the Act dt 14/01/2015, a copy of which has been placed on record which de-facto reads as under;

***During the course of assessment proceedings u/s 143(3) of the Income Tax, 1961 for A.Y 2010-11. Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 were initiated. Therefore, you are hereby requested to appear before me at my office on 29/01/2015 at 11.30 A.M and show cause why an order imposing a penalty on you should not be made u/s 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 u/s 271(1)(c).***

*(Emphasis Supplied)*

7.3 The infirmity in the notice was sought to demonstrate a reflection of non-application of mind by the Ld. AO ex facie and in support thereof a reference can be made to the specific discussion laid by the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra);

*“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 had furnished inaccurate particulars. Even before us, the learned Additional Solicitor General while placing the order of assessment laid emphasis that he had dealt with both the situations.”*  
*(Emphasis Supplied)*

7.4 Factually speaking, the aforesaid plea of assessee is borne out of record and having regard to the parity of reasoning laid down by the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra), the notice in the instant case apparently endures from non-application of mind by Ld. AO and a similar proposition was also articulated by the Hon'ble Karnataka High Court in “CIT Vs M/s SSA’s Emerald Meadows” (ITA 380/2015), which the Ld. AR heavily relied upon in support of legal ground raised as “**fumus boni iuris.**”

7.5 The Ld. DR did not dispute the factual matrix, but sought to point out that, there was a due application of mind by Ld. AO in the assessment order, wherein after discussing the reasons for the disallowance, has initiated the penalty proceedings u/s 271(1)(c) which can be seen from the relevant text of the order of the assessment;



*“In addition to this, through order sheet dtd.28/12/2012, the counsel himself accepted the above mistake and he offered to surrender the amount of Rs.251275/- for addition in the hand of the assessee. Now decision is to be taken as whether the amount of Rs.251275/- will be considered for unexplained investment u/s 69 or unexplained expenditure u/s-69C. Because the assessee had himself submitted that VAT of Rs.10051/- is refundable means assets or in other word the refundable VAT is VAT Credit (purchase). Therefore, considering the above, I hereby add of Rs.2,51,275/- in the hand of the assessee u/s-69C with initiating penalty proceeding u/s-271(1)(c) of Income Tax Act, 1961.”*

*(Emphasis Supplied)*

7.6 In our considered opinion, the attempt of the Ld. DR to demonstrate application of mind by the Assessing Officer is of no defence, inasmuch as the Hon'ble Supreme Court has approved the factum of **non-specifying relevant clause in the notice is reflective of non-application of mind** by the Assessing Officer. Further, it is also noticeable that such proposition has been considered by the Hon'ble Bombay High Court in plethora of cases inter-alia **“CIT Vs Samson Pericherry”, “PCIT Vs Goa Dorado”** and **“PCIT Vs New Era Sova Mine”** wherein it is categorically held that, **“No notice could be issued under Section 274, read with Section 271(1)(c), of the IT Act without indicating which particular limb of Section 271(1)(c) was invoked for initiating the penalty proceedings”**

7.7 To demonstrate the voice of non-application of mind by the Ld. AO, we shall also refer to the one of the pivotal feature of the present litigation that, in the assessment order the Ld. AO at the epilogue of para 5 on page 3 records that, **“with initiating penalty proceedings u/s 271(1)(c) of the Act”**, however, in the notice u/s

274 r.w.s. 271(1)(c) of the Act was issued without any limbs of section 271(1)(c) of the Act which evidently brings out the reticence on the part of Assessing Officer, resultantly there is complete absentia of clear and crystallised charge being conveyed u/s 271(1)(c), which to be defended by the appellant assessee. In this regard we also refer a similar judgment of the Hon'ble Karnataka High Court in the case of “**S Chandrashekar Vs ACIT**”, reported at 396 ITR 538 (Karn) wherein a notice u/s 274 r.w.s. 271(1)(c) of the Act was issued in printed form **without specifying the grounds of initiation of penalty proceedings, was held to be invalid and untenable in law.**

8. In omnibus, as noted by the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra), the quasi-criminal proceedings u/s 271(1)(c) of the Act ought to comply with the principles of natural justice, and in the present case, considering the observations of the Assessing Officer in the assessment order alongside his action of issuing the notice without any limb or charge being made against the assessee qua section 271(1)(c) of the Act establishes unfirm stance and therefore the proceedings suffered from non-compliance with principles of “**audi alteram partem**”.

9. Therefore, in view of the aforesaid discussion, the issue herein stands concluded in favour of the assessee and nothing contrary has been shown to us in the present facts which would warrant our taking a view different from Hon'ble Karnataka High Court in the case of “**S Chandrashekar Vs ACIT**” (Supra)

10. Since the provision of section 271(1)(c) is calamitous, albeit commercial, consequences, the provision is mandatory and brooks no trifling or dilution therewith, as a result we are of the considered view that, having regard to the fact that in the instant case the SCN dt 14/01/2015 issued u/s 274 r.w.s. 271(1)(c) of the



Act without specifying any limb or charge, is invalid and untenable in the eyes of law, consequently the penalty imposed u/s 271(1)(c) of the Act is bad in law and hence quashed accordingly.

11. Resultantly, the appeal of the assessee is allowed in terms of aforesaid observation.

Order pronounced in the open court on this Friday, 01<sup>st</sup> day of April, 2022.

-S/d-

RAVISH SOOD  
JUDICIAL MEMBER

-S/d-

JAMLAPPA D BATTULL  
ACCOUNTANT MEMBER

रायपुर / Raipur; दिनांक / Dated : 1<sup>st</sup> day of April, 2022

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur(C.G)
4. The Pr. CIT, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय न्यायाधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

निजीसचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.



Sr	Event	Occurrence Date	Attributes
1	Draft dictated on	09/03/2022	-
2	Draft placed before author	14/03/2022	-
3	Draft proposed and placed before the second Member	21/03/2022	Ld. JM
4	Draft discussed/approved by second Member	25/03/2022	Ld. JM
5	Approved draft comes to the Sr. PS/PS	30/03/2022	Sr.PS
6	Kept for pronouncement on	01/04/2022	Sr.PS
7	Date of uploading of order		Sr.PS
8	File sent to Bench Clerk		Sr.PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the Asstt Registrar		
11	Date of dispatch of order		