

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

(Through Virtual Court)

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI RATHOD KAMLESH JAYANTBHAI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 173/RPR/2018

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Deepak Kumar Patel,  
Plot No.168, Sector-C,  
Industrial Area, Urla,  
Raipur (C.G.)  
PAN : AKGPP0868F

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-3(3), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Ms. Puja Bajaj, AR

Revenue by : Shri G.N Singh, DR

सुनवाई की तारीख / Date of Hearing : 23.05.2022

घोषणा की तारीख / Date of Pronouncement : 25.05.2022

**आदेश / ORDER****PER RATHOD KAMLESH JAYANTBHAI, AM:**

This appeal is filed by the assessee aggrieved from the order of the Commissioner of Income Tax (Appeal)- I, Raipur [ Here in after referred as Ld. CIT(A) ] for the assessment year 2010-11 dated 18.06.2018.

2. The hearing of the appeal was concluded through audio-visual medium on account of Government guidelines on account of prevalent situation of Covid-19 Pandemic, both the parties have placed their written as well as oral arguments during this online hearing process.

3. The appellant has taken following grounds in this appeal;

1. That the order of Ld. CIT(A) is bad in law as well as on facts.
2. The Learned CIT(A) has erred in law and on facts in upholding the validity of the order passed by the Income Tax Officer 3(3) dated 14/03/2017 under Section 271(1)(c) of the Act which is bad in Law and Invalid.
3. The Learned CIT(A) has erred in law and on facts in sustaining the order of the Assessing Officer levying penalty under Section 271(1)(c) of the Act amounting to Rs.12,00,000/-.
4. On the facts and in Law, the Ld. AO erred in not recording any satisfaction whatsoever much less as contemplated in Section 271(1B) before initiating and imposing penalty under Section 271(1)(c).

5. That any other relief/ deduction, which the Hon'ble Tribunal may deem fit be granted to the appellant.
6. That the appellant craves leave, to urge, add, amend, alter, enlarge, modify, substitute, and delete any of the Ground or Grounds and to adduce fresh evidence at the time of the hearing of the appeal.

4. The fact as culled out from the records that the assessee has e-filed the Return of income on 31-08-2010 declaring total income of Rs. 12,85,579/ The assessee is doing business of MFG of HDP Pipes & Assembly of Sprinkler System. The scrutiny assessment completed u/s. 143(3) on 01-03-2013 determining total income of Rs. 67,14,940/-.

4.1 During the course of assessment proceedings it was noticed that the assessee has made payment of commission of Rs. 11,92,062/- on sales to 6 persons who all residing in Kolkata. The Assessing Officer [ here in after "Id AO or AO ] further observed that the commission agent travels from Kolkata to Raipur 830 kms. and from Raipur, he travels to Kanker, which is 130 km from Raipur and Raigarh which is 250 km from Raipur. They have not worked as commission agent for anyone else except the assessee during the year as evidenced from Income & Expenditure account and computation of income of the agent. The

agents have offered entire commission income to tax and there is no expenditure incurred against it. All the agents have very low income and still lesser withdrawals to support their livelihood. All the agents have their bank account in the same branch in Kolkata. All these facts prove that this is a device to reduce the profits of the assessee and no such person has ever worked as a commission agent for the assessee. In such a circumstance it is beyond human probability to think that they would come to Chhattisgarh State to sell pipes. It is thus, clear that the assessee has shown the commission expenses to decrease the profit and has caused loss of the revenue. Hence the commission expenses of Rs. 11,92,062/- was disallowed and added back to the total income of the assessee and penalty proceedings u/s. 271(1)(C) was initiated for furnishing inaccurate particulars of income.

4.2 Secondly it was also observed during the course of assessment proceedings that the assessee had incurred job work expenses at Rs. 36,95,000/-. Job work expenses were claimed to have paid to three persons. As per details submitted by the assessee, the address of the job work contractor is either same or close to that of the assessee. The

job work payment was made at Rs. 10,45,000/-, 10,45,000/- & 16,00,000/- to the contractors who have offered a meagre profit i.e. below the taxability limit. On field enquiry it was noticed that no such job work is undertaken at the factory premises of the assessee or at the factory addresses of the parties to whom payments were made under this head. On verification of books of accounts produced during the course of assessment proceedings, it was noted that there were no vouchers for the job work expenses. In response to show cause notice the assessee stated that the contract work was undertaken at the sites by the contractors. The site is various agricultural lands of the farmers and the nodal agency paying for such sale and installation is CG Rajya Beej Evam Krishi Vikas Nigam Ltd. The assessee could not produce any person, like the farmer or any authority from the agency or evidence in support of its claim. Summons u/s. 131 was issued to each recipient. When they attended it was noted that one of the person, Shri Navin Patel was the same person who had attended the hearings and produced books of the assessee as his accountant. To give the picture in a nut shell, none of the parties have undertaken any job from other parties. They have submitted reply that is the same in all the three

cases. They have no machinery or paraphernalia for the work, in their words, only tools and tackles are required. As for the labour payment, they had to state that the skilled labours are required for manufacturing of HDPE Pipes and whereas for assembly of Sprinkler Irrigation System unskilled Labours are required. They used to engage casual workers from time to time. They do not have permanent labours, therefore, it was not possible for them to produce the labour before the A.O. Thus, the persons had no proof of actually doing any work in the nature of job work. It is thus clear that the assessee has shown the job work expenses to decrease the and has caused loss of the revenue. Hence the job work expenses to profit s Job Work Expenses of Rs. 36,95,000/- was disallowed and added to the total income of the assessee and penalty proceedings u/s. 271(1)(C) was initiated for furnishing inaccurate particulars of income.

4.3 Against the order of the A.O. the assessee was in appeal before the Ld. CIT(A), who vide its order dated 31-08-2016, allowed relief at 30% and confirmed 70% of disallowances under both the above heads.

4.4 So as to finalise the penalty proceedings initiated during the course of assessment proceedings, another opportunity was given to the assessee by issue a show cause notice dated 11-01-2017 fixing the case for 20-01-2017 as to why penalty u/s. 271(1)(C) should not be imposed. The notice was served on 12-01-2017. On the date of hearing none attended nor any written explanation or application has been filed by the assessee. Thus, it is clear that the assessee has nothing to say in the matter. In view of the above facts and circumstances of the case, the AO stated that I am satisfied that the assessee has furnished inaccurate particulars of not disclosing his true and correct income in the return of income and is liable for penalty u/s. 271(1) of the I.T. Act.

5. Aggrieved from the order of the Id. AO the assessee filed an appeal before the Id. CIT(A) who has sustained the levy of penalty and the relevant findings of the Id. CIT(A) is as under :

#### Finding of the CIT(A)

2.3 As per the appellant the notice u/s 271(1)(c) dated 01/03/2013 is not valid since un-relevant paras of the notice have not been struck off. Further, as per the appellant the second

notice dated 11/01/2017 is not in proper format. There is no submission by the assessee on the merit of the case.

I find that in the notice dated 01/03/2013 the tick mark sign has been placed on Para (c) and not on paras (a) and (b). Para (c) reads as "have concealed the particulars of your income or have furnished inaccurate particulars of such income." It means that the notice was in respect of offences mentioned in Para(c) and not in respect of the offences in para (a) or (b). Further the notice dated 11/01/2017 is an intimation of fixing a date to allow opportunity to the appellant to appear and represent his case. On these facts the assessee's objection raised is hereby rejected and the appeal is dismissed.

3.0 Appeal is dismissed.

6. 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. In so far as the merits of the case concern, Ld. AR contended that, the Id. CIT(A) has already allowed part of the disallowance made which itself proves that the assessee neither provided inaccurate particulars nor concealed the particulars of income and it is the mere disallowance of claim made by the assessee and thus, the levy of penalty even on merits required to

be deleted considering the various judicial decision on account of mere disallowance of claim no penalty is leviable.

7. During the course of hearing the Id. AR appearing on behalf of the assessee drawn our attention to show cause notice bearing dated 01.03.2013 and 11.01.2017 wherein there was complete absentia of clear findings so as to charge under which limb the assessee has to defend the penalty proceedings. Both the notices were issued mechanically without specifying the charge under which the default made by the assessee. In addition to the above oral arguments the Id. AR of the assessee has also filed the written submission on this legal ground raised and cases laws relied upon and the same is reproduced for the sake of brevity of the facts:

#### Submission of the assessee

That the Notice so issued is not valid as the assessing Officer did not strike off the inappropriate portion of the Said Notice, as it did not specify under which limb of Section 271(1)(c) penalty proceedings had been initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income. Therefore, the Notice itself is void-ab-initio. The photocopy of the Notice is submitted herewith for your honor kind reference and record.

That the second show-cause Notice U/s 274 read with Section 271(1)(c) of the Act dated 11/01/2017 was issued. That in the said Notice the Assessing Officer has not even mentioned any particulars regarding which matter the said Penalty Notice has been issued. The photocopy of the said Notice is submitted herewith for your honor kind reference and records. Therefore, the said Notice is bad in Law and is not valid and consequently, the Penalty Order dated 15/03/2017 passed by the Assessing Officer for concealment of Income U/s 271(1)(c) of the Act., is also not Valid. The issue in dispute is squarely covered by the decision of the Supreme court in the case of CIT v SSA's Emerald Meadows [2016] 73. Taxmann.com 248(SC) and Dilip N. Shroff v JCIT[207] 291 ITR 519 (SC)

The Supreme Court in the case held that the AO, while issuing a Notice for initiating a penalty proceeding U/s 271(1)(c) of the Act should apply his mind and make it clear as to whether he had proceeded on the basis that the taxpayer had concealed his income or he had furnished inaccurate particulars of income. That since the Assessing Officer has not specifically mentioned under which limb of the Section 271(1)(c) of the Act the Notice for initiating Penalty proceedings has been issued, the said Notice and entire Penalty proceedings are not valid.

The decision of the Division Bench of Karnataka High Court to consider the question of Law for Section 271(1)(c) of the Act in case of Commissioner of Income Tax vs Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565.

Section 271(1)(c): Omission by the AO to explicitly specify in the penalty notice as to whether penalty proceedings are being initiated for furnishing of inaccurate particulars or for concealment of income makes the penalty order liable for cancellation.

The Karnataka High Court had to consider the following question of law.

"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?"

The High Court ruled in favour of the assessee with the following observations:

"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 COMMISSIONER OF INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565. 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."

The department filed a Special Leave Petition to challenge the aforesaid judgment of the High Court. HELD by the Supreme Court dismissing the SLP:

"We do not find any merit in this petition. The special leave petition is, accordingly, dismissed." The photocopy of the Judgment of Supreme Court is submitted herewith for your honor kind reference and record.

8. Per contra the Ld. DR supported the orders of the lower tax authority and the conviction of Ld. CIT(A) and also stated that it is mere technical error and the same may be seen accordingly and has heavily relied upon the findings of the lower authorities and requested to confirm the penalty levied.

9. The Id. AR appearing on the behalf of the assessee also relied upon the decision of this co -ordinate bench given in the case of Roopa Nankani in ITA No. 138/RPR/2016 dated 16.05.2019 where in the bench has dealt the similar legal issue and the relevant finding is extracted for the sake of brevity

6. *Heard. On the similar facts of no specific charge the coordinate bench in the case of "Manoj Kumar Agrawal vs. DCIT" (supra) has deleted the entire penalty levied by Assessing Officer. The relevant paras 5 to 6 of the said order of the Tribunal (supra) are extracted hereunder :*

*"5. We have considered the rival arguments made by both the sides and perused the material available on record. A perusal of the notice issued u/s 274 r.w.s. 271 shows that the inappropriate words in the said notice has not been struck off i.e. the notice does not specify under which limb of section 271(1)(c) the penalty proceedings had been initiated i.e whether for concealment of income or for furnishing of inaccurate particulars of income. We find the Hon'ble Karnataka High Court in the case of M/s SSA'S Emerald Meadows (supra) has observed as under:*

*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 had 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 COMMISSIONER OF INCOME TAX-VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 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."*

*6. We find the SLP filed by the Revenue has been dismissed by the Hon'ble Apex Court. Further, the various Benches of the Tribunal following the above decisions are cancelling the penalty so levied by the Assessing Officer and confirmed by the Id. CIT(A) on account of non-striking of the inappropriate words from the notice issued u/s 274 r.w.s. 271 of the Act. Since in the instant case, the Assessing Officer has not struck off the inappropriate words in the notices issued u/s 274 r.w.s. 271. therefore, the notice does not specify under which limb of section 271(1)(c) the penalty proceedings had been initiated i.e. whether for concealment of income or for furnishing of inaccurate particulars of income. Therefore, the penalty proceedings become bad in law. We, therefore, set-aside the order of the Id. CIT(A) and direct the Assessing Officer to cancel the penalty so levied. The appeal filed by the assessee is accordingly allowed."*

*7. Considering the above referred decision of the Tribunal (supra), we are of the view that such penalty is unsustainable in law legally. It is a settled legal proposition that the Assessing Officer is under obligation to specify the appropriate limb of clause (c) of section 271(1) of the Act at the time of initiation as well as at the time of levy of penalty. In view of the above deliberation on this issue, without going into the merits of the case, we set-aside the order of the CIT(A) and direct the Assessing Officer to delete the entire penalty imposed by him. Accordingly, the ground raised by the assessee is allowed on legal issue.*

*8. In the result, the appeal of the assessee is allowed.*

10. Respectfully, following decision of the co-ordinate bench of this bench on the very legal issue that the assessing officer is under

obligation to specify the appropriate limb of clause c of section 271(1)(c) of the Act at the time of initiation as well as at the time of levy of penalty notice. In this case it has been drawn our attention that while issuing the notice at two occasion Id. AO failed to specify the charge under which the assessee is liable for penalty and therefore, without going into the merits of the case, we set-a side the order of CIT(A) and direct the Assessing Officer to delete the levy of penalty imposed upon the assessee, relying on the various decision cited by the co-ordinate bench while the rendering the decision in the case of Shri Roopa Nankani. In the result the appeal of the assessee is allowed on legal issue.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in open court on 25<sup>th</sup> May, 2022.

Sd/-

**RAVISH SOOD**  
**JUDICIAL MEMBER**

Sd/-

**RATHOD KAMLESH JAYANTBHAI**  
**ACCOUNTANT MEMBER**

रायपुर/ RAIPUR ; दिनांक / Dated : 25<sup>th</sup> May, 2022  
Ganesh Kumar

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

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

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	23.05.2022	Sr.PS/PS
2	Draft placed before author	24.05.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		