

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING

ITA No.01/Ind/2021
Assessment Year:2010-11

ACIT-4(1), Indore (Appellant)	बनाम/ Vs.	Shri Mukesh Sangla, Indore (Respondent)
P.A. No.ANAPS5579F		

Revenue by	Shri P.K. Mitra, CIT-DR
Assessee by	Shri Ajay Tulsian & Ms. Shalini Mehta, CAs
Date of Hearing:	04.01.2022
Date of Pronouncement:	11.03.2022

आदेश / O R D E R

PER MANISH BORAD, A.M:

The above captioned appeal at the instance of Revenue is directed against the order of Learned CIT(A) – III, Bhopal dated 15.10.2020 which is arising out of the order passed u/s 271(1)(c) dated 31.03.2018 by JCIT Central Circle-1, Indore. The Revenue has raised the following grounds: -

1. *The Ld. CIT(A) was not justified in deleting the addition of Rs. 3,77,54,812/- made on account of levying of penalty u/s 271(1)(c),*

whereas the AO strongly established that the case of the assessee clearly comes under the provisions of section 271(1)(c).

- 2. The Ld. CIT(A) was not justified in not considering that the assessee himself in reply to specific query on difference has admitted that he offered miscellaneous income of Rs. 11,01,00,000/- pursuant to search and seizure action u/s 132.*
- 3. The Ld. CIT(A) was not justified in not considering that the assessee has declared additional income in pursuant to the search and seizure action and on the basis of seizure of incriminating documents.*
- 4. The Ld. CIT(A) was not justified in not considering that the AO has properly initiated penalty proceedings u/s 271(1)(c) as mentioned in both the assessment order i.e. original assessment order dated 28.03.2014 and set aside assessment order dated 30.06.2017.*
- 5. The Ld. CIT(A) was not justified in not considering that the assessee had no reasonable case for enhancing income shown in ROI filed u/s 139(1) to ROI filed in response to the notice u/s 153A.*
- 6. The Ld. CIT(A) was not justified in not considering that the AO has properly initiated penalty proceedings u/s 271(1)(c).*

2. Brief facts of the case as culled out from the records are that the assessee is an individual and head of the Sangla family and also the promoter of various companies belonging to Signet Group. The assessee filed his return of income u/s 139 on 28.03.2011 declaring total income of Rs. 16,47,191/-. Search and Seizure operations u/s 132 were carried on the "Signet Group" on 03.11.2011 wherein the assessee was also covered. Later on notices u/s 153A was issued and the assessee filed the return u/s 153A r.w.s 139 for this year on 25.04.2013, declaring a total income of Rs. 12,38,31,050/- including a net additional income of Rs. 12,21,83,859/-. Assessment u/s 153A r.w.s. 143(3) was completed and common assessment order was passed on 28.03.2014 for AY 2006-07 to 2012-13 wherein the income of this year was assessed at Rs.

34,47,11,770/-, making additions of Rs. 22,08,80,720/-. The AO initiated the penalty proceedings u/s 271(1)(c) in respect of the additions made in the assessment order. In the appeal filed by the assessee, the Learned CIT(A) allowed partial relief. The first appellate order was challenged by the assessee as well as by the department before the ITAT, Indore which was decided on 10.02.2016. The ITAT set aside the assessment framed u/s 153A for making fresh assessment for all the years as per the directions given in the order. The fresh assessment order u/s 153A r.w.s. 143(3)/254 was passed by the AO on 30.06.2017 assessing the income for this year at Rs. 12,38,31,050/- i.e. at the same figure at which it was declared in the return filed u/s 153A. Thus, none of the addition made in the earlier order passed u/s 153A r.w.s 143(3), dated 28.03.2014 survived. Later on, the AO initiated fresh penalty proceedings under section 271(1)(c) of the Act by issuing formal notice under section 274 r.w.s. 271(1)(c) along with the order passed u/s 153A r.w.s. 143(3) / 254 dated 30.06.2017. Subsequently, a letter dated 16.03.2018 was served on the assessee, requiring to show cause as to why penalty u/s 271(1)(c) be not imposed on the assessee. In response, the assessee filed a reply. However, concluding the penalty proceedings, the AO passed the order dated 31.03.2018, levying penalty of Rs.3,77,60,000/- u/s 271(1)(c) in respect of Rs.12,21,83,859/- by invoking the explanation 5A to section 271(1)(c) of the Act for A.Y. 2010-11. Being aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who deleted the penalty. Therefore, the Revenue is in appeal before this Tribunal.

3. Ld. CIT-DR vehemently argued defending the order of the Ld. AO and submitted that the penalty was rightly levied by the Assessing Officer.

4. Per contra, Ld. Counsel for the assessee relied upon the order of the Ld. CIT(A) and submitted that the additions on which the penalty proceedings were initiated have all been deleted. Further, learned counsel for the assessee submitted that the penalty was rightly deleted by the Ld. CIT(A) giving

categorical finding that no penalty proceedings were initiated on the additional income declared by the assessee u/s 153A, either in the regular assessment order passed u/s 153A r.w.s. 143(3) dated 28.03.2014 or in the set aside assessment order passed u/s 153A r.w.s. 143(3) / 254 dated 30.06.2017 and also that the show cause notice issued u/s 274 was vague and not in accordance with law.

5. We have heard rival contentions and perused the material available on record. We find that the Revenue has challenged the findings of CIT(A) deleting the penalty u/s 271(1)(c) of Rs. 3,77,60,000/- levied by the AO on the additional income offered by the assessee in the return filed u/s 153A by invoking the deeming provision of Explanation 5A to section 271(1)(c). We find that after the search, the assessee prepared a cash flow statement and offered additional income on the basis of peak worked out through the cash flow statement. In the first round of assessment proceedings, the cash flow statement and also the income offered by the assessee was rejected by the AO and independent additions were made on the basis of notings on various LPS seized during the search. The AO treated the majority of loose papers seized during the search from the residence of the assessee as related to the business operations of the company M/s Signet Industries Ltd. and made substantive addition in the hands of the company and protective additions in the hands of the assessee. We also find that these facts are also discussed in Para 38 and 39 of the order of the ITAT in IT(SS)A No. 111 to 114 and 401/Ind/2015 dated 10.02.2016. Thus, the crux of the first round of the assessment proceedings was that the cash flow statement of the assessee and the income offered thereon was not accepted by the AO and the major additions on the basis of seized material was made in the hands of Signet Industries Ltd. on substantive basis and in the hands of the assessee on protective basis. In the first appeal, the Ld. CIT(A) held that since the loose papers were found from the possession of the assessee and were also owned up by him, additions made by the AO in the case of the assessee were confirmed on substantive basis and substantive

additions made in the case of the company were deleted and the Ld. CIT(A) also confirmed the rejection of peak theory of the assessee. However, out of the additions made by the AO of both the payments and the receipts, the CIT(A) sustained the additions only to the extent of higher of the receipts or payments. Accordingly, the Ld. CIT(A) confirmed the additions to the extent of Rs. 23,06,22,104/- on substantive basis in the hands of the assessee for the year under consideration. These facts are also discussed in Para 41 and 42 of the order of the ITAT dated 10.02.2016.

6. We find that the department and the assessee both filed second appeal before the ITAT, which were decided vide order dated 10.02.2016 in IT(SS)A No. 111 to 114 and 401/Ind/2015. The ITAT discarded the methodology adopted by the AO of making the additions of both cash receipts and payments on the basis of loose papers and also the theory adopted by the CIT(A) of making the addition of the higher of the cash receipts or payments and accepted the theory of the assessee of offering the income on the basis of cash peak working. The ITAT also held that the income in respect of the loose papers is required to be taxed in the hands of the assessee. The ITAT also accepted the peak theory in para 50 and 51 on internal page 108 to 110 of its order dated 10.02.2016 and restored the matter back to the file of the AO with the direction to rework the peak and make the additions accordingly. We find that the set aside assessment was completed by the AO on 30.06.2017 accepting the income returned by the assessee in the return filed u/s 153A r.w.s. 139 of Rs.12,38,31,050/-. We find that in this set aside assessment order which is a common assessment order for AYs 2006-07 to 2012-13, there is no discussion in the body of the order with regard to any finding for the assessment year under consideration, and only while computing the assessed income, the income shown in the return has been accepted.

7. On consideration of above facts, we find that after the search, the assessee offered income on the basis of cash flow statement working out the

peak credit and the AO while making the assessment not only discarded the cash flow statement but also rejected the income offered by the assessee on the basis of peak credit. The AO choose to make independent additions on the basis of notings found in the document seized during the search and also initiated penalty proceedings u/s 271(1)(c) in respect of the additions made by him. Since the income offered by the assessee in the return was itself rejected by the AO, no penalty proceedings were initiated in respect of the income so offered by the assessee. The ITAT deleted the additions made by the AO and restored back the matter to the AO to assess the income on the basis of cash flow statement and peak theory. In the second round of assessment the income returned by the assessee was accepted. We find that the Ld. CIT(A) examined the issue at length and deleted the penalty levied u/s 271(1)(c) observing as under:-

“4.1 Ground No 1 & 2:- *Through these grounds of appeal, the appellant has challenged the initiation of the penalty proceedings and also the levy of penalty of Rs. 3,77,60,000/- u/s 271(1)(c) of the Income Tax Act, 1961. It is stated in the penalty order that during the assessment proceedings in response to notice u/s 153A the assessee voluntarily disclosed income u/s 132(4) of Rs. 12,21,83,859/- declared as additional income in his return therefore, no separate addition has been made on this account. It is further stated that the case of the assessee is covered by the explanation 5A of section 271(1)(c) and since the additional income was offered by the assessee pursuant to search u/s 132 where incriminating material was found and seized which was confronted with the assessee and the assessee declared additional income of Rs. 12,21,83,859/- on the basis of the material found and seized in search. It is the case of the AO that there is conscious concealment of income on the part of the assessee and the assessee should be deemed to have filed inaccurate particulars of his income. Accordingly the AO worked out the concealed income and levied a penalty of Rs. 3,77,60,000/- u/s 271(1)(c) for furnishing of inaccurate particulars of income.*

4.1.1 *The appellant during the appellate proceedings has stated that after the search the appellant has prepared a systematic cash book from 01.04.2008 to 31.03.2012 on the basis of various notings in the loose papers contained in LPS-3 and LPS-4 seized from his residence, worked out the peak credit and offered the same as income for the respective years in the returns filed u/s 153A r.w.s 139. It is also submitted that these entries related to personal business of the appellant camouflaged in the name of various known persons. Referring to the regular assessment order passed u/s 153A dated 28.03.2014, the appellant stated that the said cash book and also the peak theory adopted by the appellant and also the additional income offered was rejected by the AO and the AO made*

separate additions on the basis of each and every noting found in the loose papers. The AO also treated the majority of the loose papers as related to the business operation of the company M/s Signet Industries Ltd. and therefore, made substantive addition in the hands of the company and protective additions in the case of the appellant. While making the addition in the hands of the appellant the AO reduced the amount of additional income already offered by the appellant and made the addition of the balance amount. All the additions made by the AO were deleted in the appellate proceedings and finally it was held by the Honourable ITAT that the methodology adopted by the AO of making the addition on the basis of loose papers was wrong and it was also held that the income in respect of these loose papers was required to be taxed in the hands of the appellant and the peak theory adopted by the appellant was also accepted by the Honourable ITAT. The Honourable ITAT set aside the regular assessment order with the directions to rework the peak offered by the appellant and to make the addition accordingly. The appellant has also stated that as per the directions of the ITAT, the AO verified the peak working of the appellant and finally accepted the income returned by the appellant for this year. It is further stated by the appellant that penalty u/s 271(1)(c) has been levied in respect of the additional income offered by the appellant in the return filed u/s 153A and contended that when the income offered by the appellant in the return was itself rejected by the AO, the AO later on could not have levied penalty on the same which in his own eyes was not an income at all. It is also contended by the appellant that in the fresh set aside assessment order no addition has been made in this year and therefore, no penalty proceedings were initiated therein for this year. The appellant therefore contended that on these peculiar facts itself penalty u/s 271(1)(c) ought not to have been levied in this case.

4.1.2 *The appellant has also contended that from the penalty order it is not at all clear that whether the AO has levied the penalty with respect to the regular assessment order passed u/s 153A r.w.s. 143(3) dated 28.03.2014 or with respect to the set aside assessment order passed u/s 153A r.w.s. 14(3) / 254 dated 30.06.2017. The appellant has also contended that the show cause notice issued u/s 274 r.w.s. 271(1)(c) dated 30.06.2017 along with the assessment order passed u/s 153A r.w.s. 143(3) / 254 is vague and bad in law since it refers to both the charges of concealing the particulars of income or furnishing inaccurate particulars of income and has placed heavy reliance on the decision of Honourable MP High Court in the case of Pr. CIT V/s Kulwant Singh Bhatia (2018) 304 CTR 0103 and also various other decisions of the Honourable jurisdictional ITAT Indore Bench and also of various other Courts for the proposition that the very initiation of the penalty proceedings is not in accordance with law and therefore, the entire penalty proceedings and the penalty order are bad in law.*

4.1.3 *On the merits, the appellant contended that since the income offered by the appellant in the return filed u/s 153A is finally accepted and no addition made by the AO survived in this case for this year, therefore, no penalty was leviable u/s 271(1)(c).*

4.1.4 After considering the assessment order, the penalty order and also the written submissions of the appellant I find that in this case, the appellant has declared an income of Rs. 12,38,31,050/- in the return filed u/s 153A. The AO rejected the cash book prepared by the appellant incorporating the entries found noted in the seized material and also rejected the peak theory of the appellant of offering the income. Thus the additional income offered by the appellant after the search in the return filed u/s 153A was rejected by the AO. The AO made various additions on the basis of loose papers found and seized, which all additions were later on deleted in the subsequent appellate proceedings. The Honourable ITAT accepted the methodology of offering income by the appellant on the basis of peak credit and the regular assessment order passed u/s 153A was set aside by the Honourable ITAT with the direction to re-compute the peak credit and make additions accordingly. The income computed by the AO in the fresh set aside assessment order is Rs. 12,38,31,050/- which is the income returned by the appellant. The contentions of the appellant that it is not clear from the penalty order that whether the penalty has been levied with respect to the regular assessment order or with respect to the fresh set aside assessment order appear to be correct. In view of these undisputed facts, I find that the contention raised by the appellant that when the income offered by the appellant was itself rejected by the AO, penalty u/s 271(1)(c) cannot be levied in respect of the said income. It is seen that since the income offered by the appellant was not accepted in the regular assessment order and separate addition were made on the basis of notings in the loose papers, the AO while passing the regular assessment order had no occasion to initiate the penalty in respect of the additional income offered by the appellant since the same was rejected by the AO. The penalty proceedings u/s 271(1)(c) was indeed initiated in the said assessment order, but the same were initiated obviously only in respect of the additions made by the AO in that assessment order. Later on the regular assessment order itself was set aside and all the addition made therein were deleted. Therefore, the question of levying penalty with respect to such proceedings initiated in the regular assessment order dated 28.03.2014 does not arise. Coming to the set aside assessment order dated 30.06.2017 passed afresh in pursuance to the directions of the Honourable ITAT, accepting the peak theory of offering income of the appellant, it seen that in the set aside order the AO has accepted the income offered by the appellant u/s 153A. Further in the common set assessment order passed for all years covered by the search there is no discussion in the body of the order with regard to the income of this year. Only while computing the incomes of all the years in the end of the assessment order, it is stated that income shown in the return for AY 2010-11 is Rs. 12,38,31,050/- and the income assessed is also Rs. 12,38,31,050/-. Therefore, the contention of the appellant that there was no occasion to initiate the penalty proceedings u/s 271(1)(c) in the set aside order for this year also appears to be correct. It is seen that while concluding the set aside assessment order the AO has issued directions for issuing notices u/s 271(1)(c) for AYs 2008-09 to 2011-12, which it seems to be a very general direction issued for all the years covered by the said assessment order. Such a general direction cannot be construed as initiation of penalty proceedings for AY 2010-11 particularly when there is practically no discussion for AY 2010-11 in the body of the set aside assessment order. Therefore, I am of the view that no penalty proceedings were initiated in respect of the income offered by the appellant either in the regular

assessment order passed u/s 153A r.w.s. 143(3) dated 28.03.2014 or in the set aside assessment order passed u/s 153A r.w.s. 143(3) / 254 dated 30.06.2017.

4.1.5 I also find that the penalty show cause issued u/s 274 is vague and not in accordance with law. As per provisions of section 271(1)(c) of the Act, there are two different charges i.e. the concealment of particulars of income or furnishing of inaccurate particulars of income. The penalty can be imposed for a specific charge. It is a settled proposition that both these limbs i.e. concealment of particulars' of income or of 'furnishing inaccurate particulars' of income carry different connotations as held by the Hon'ble Supreme Court in the case of T Ashok Pai v/s CIT (2007) 292 ITR (SC). The penalty notice was issued in a mechanical manner without specifying the specific charge as to whether the appellant is found guilty of concealing the particulars of the income or have furnished inaccurate particulars of income. Thus the very initiation of the present penalty proceedings is not in accordance with the law and have led to vitiation of entire penalty proceedings. The Hon'ble jurisdictional High Court in the case of Principal Commissioner of Income Tax v/s Kulwant Singh Bhatia dated 09.05.2018 (ITA 9 to 14 of 2018) has held that the penalty u/s 271(1)(c) of the Act of 1961 is not sustainable in law as the notice was not specific, observing as follows:-

"on due consideration of the arguments of the Learned counsel for the appellant, so also considering the fact that the ground mentioned in show cause notice would not satisfy the requirement of law, as notice was not specific, we are of the view that Learned Tribunal has rightly relying on the decision of CIT V/s Manjunatha Cotton Ginning Factory and CIT V/s SSA'S Emerald Meadows rightly allowed the appeal of the assessee and set aside the order of penalty imposed by the authorities. No substantial question of law is arising in these appeals. ITA. No(s) 9/2018, 10/2018, 11/2018, 12/2018, 13/2018 and 14/2018, filed by the appellant have no merit and are hereby dismissed."

In the present case also it is seen that no specific charges was levied in the penalty show cause notice issued u/s 274 which is a statutory notice. The AO has mentioned both the charges in the penalty show cause notice. Considering these facts and also following the decision of Honourable Jurisdictional High Court in the case of Kulwant Singh Bhatia (Supra) it is held that the penalty notice is vague and not in accordance with law. Further the penalty has been levied by invoking Explanation 5A of section 271(1)(c) which intention was also not communicated to the appellant through the notice issued u/s 274. Thus there was no requisite satisfaction in any of the assessment order and also in the notice issued u/s 274. It is also seen that the returned income and the assessed income in this case are same and therefore, penalty u/s 271(1)(c) is not leviable as held by the Honourable Supreme Court in the case of CIT V/s Sureshchand Mittal (2001) 251 ITR 009.

4.1.6 In view of the above discussion the penalty levied u/s 271(1)(c) of Rs. 3,77,60,000/- is held to be wrong and bad in law and is hereby deleted.

*Therefore, the penalty imposed by the AO amounting to Rs. 3,77,60,000/- is **Deleted.** Therefore, the appeal on these grounds is **Allowed.**”*

8. From the perusal of the above finding of the Ld. CIT(A), we find that there is no dispute that the additions made by the AO, on which penalty proceedings were initiated, are all deleted and the income offered by the assessee, on which penalty has been levied, was not accepted by the AO and both the cash flow statement and the income offered by the assessee of peak credit were rejected by the AO, clearly indicating that the AO had no occasion to initiate penalty in respect of income offered by the assessee in the regular assessment order. In the set aside assessment order as well there is no discussion for the year under consideration i.e. AY 2010-11 in the body of the assessment order and only the income returned by the assessee had been accepted while computing the assessed income. Therefore, there could not have been any occasion to initiate the penalty proceedings for AY 2010-11 in respect of the income offered by the assessee even in the set aside assessment order. Thus, the finding of the Ld. CIT(A) that no penalty proceedings were initiated in this case in respect of the income offered by the assessee is justified. We are of the view that the AO cannot levy penalty on the income which itself was rejected by him in the first round of assessment proceedings and which income was restored only after the order of the ITAT. Therefore, we confirm the finding of the ld. CIT(A) that no penalty proceedings were initiated in respect of the income offered by the assessee either in the regular assessment order passed u/s 153A r.w.s. 143(3) dated 28.3.2014 or in the set aside assessment order passed u/s 153A r.w.s. 143(3)/254 dated 30.6.2017.

9. Further, we also find that the penalty notice issued u/s 274 is also vague as both the charges i.e. concealment of particulars of income or furnishing of inaccurate particulars of income are mentioned therein. As per provisions of section 271(1)(c) of the Act, there are two different charges i.e. the concealment of particulars of income or furnishing of inaccurate particulars of income. The

penalty can be imposed for a specific charge. It is a settled proposition that both these limbs i.e. concealment of particulars' of income or of 'furnishing inaccurate particulars' of income carry different connotations as held by the Hon'ble Supreme Court in the case of T Ashok Pai v/s CIT (2007) 292 ITR (SC). In the instant case, the penalty notice was issued in a mechanical manner without specifying the specific charge as to whether the assessee is found guilty of concealing the particulars of the income or has furnished inaccurate particulars of income. Thus the initiation of the present penalty proceedings is not in accordance with the law and have led to vitiation of entire penalty proceedings in view of the ratio laid down by the Hon'ble jurisdictional High Court in the case of Principal Commissioner of Income Tax v/s Kulwant Singh Bhatia dated 09.05.2018 (ITA 9 to 14 of 2018) wherein the Hon'ble High Court held that the penalty u/s 271(1)(c) of the Act of 1961 is not sustainable in law as the notice was not specific, observing as follows:-

"on due consideration of the arguments of the Learned counsel for the appellant, so also considering the fact that the ground mentioned in show cause notice would not satisfy the requirement of law, as notice was not specific, we are of the view that Learned Tribunal has rightly relying on the decision of CIT V/s Manjunatha Cotton Ginning Factory and CIT V/s SSA'S Emerald Meadows rightly allowed the appeal of the assessee and set aside the order of penalty imposed by the authorities. No substantial question of law is arising in these appeals. ITA. No(s) 9/2018, 10/2018, 11/2018, 12/2018, 13/2018 and 14/2018, filed by the appellant have no merit and are hereby dismissed."

10. We find that in the present case also, no specific charge was levied in the penalty show cause notice issued u/s 274 which is a statutory notice. The AO simply mentioned both the charges in the penalty show cause notice. Considering these facts and also following the decision of Hon'ble Jurisdictional High Court in the case of Kulwant Singh Bhatia (supra), we hold that the penalty notice is vague and not in accordance with law. Thus, the penalty proceedings, so initiated, were unjustified. Accordingly, the penalty levied u/s 271(1)(c) of Rs. 3,77,60,000/- being unjustified and bad in law is deleted.

11. In result, the departmental appeal is dismissed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 11.03.2022.

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 11.03.2022

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,

Sr. Private Secretary, I.T.A.T., Indore