

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

*(Conducted through Virtual Court)*

**ITA No. 26/Ind/2022**  
**Assessment Year: 2009-10**

M/s. J.C. Sharma & Sons Bhopal	<b><u>बनाम</u></b>	ACIT, 5(1), Bhopal
(Appellant / Assessee)	<b><u>/Vs.</u></b>	(Respondent/ Revenue)
<b>PAN: AAEFJ6447L</b>		
Assessee by	Shri Ashish Goyal, AR	
Revenue by	Shri P.K. Singhi, Sr. DR	
Date of Hearing	26.07.2022	
Date of Pronouncement	28.07.2022	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

1. This appeal filed by assessee is directed against the order dated 29.10.2021 of learned National Faceless Appeal Centre (NFAC), Delhi [**Ld. CIT(A)**] which in turn arises out of the order of penalty dated 09.11.2017 passed by the learned ACIT-5(1), Bhopal [**Ld. AO**] u/s 271(1)(c) of the Income-tax Act, 1961 [**the Act**] for the Assessment-Year 2009-10, on the following grounds:

*“1. The Ld. CIT(A) was not justified in confirming the penalty, which is bad in law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*

*2. The ld. CIT(A) was justified in not giving a fair and reasonable opportunity of being heard, and ignoring the facts and*

**circumstances of the case, and merely dismissing the appeal without considering the merits of the case.**

**3. The Ld. CIT(A) erred in confirming the penalty of Rs. 10,00,000/- u/s 271(1)(c) of the Income Tax Act 1961.”**

2. The registry has informed that that the present appeal was required to be filed by 28.12.2021 but the same was actually filed on 21.02.2022, after a delay of 62 days. The Ld. AR prayed that the delay has occurred due to Covid-19 Pandemic. The Ld. AR further placed reliance on the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which suo motu extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws has been granted and hence there is no delay in fact. We confronted the Ld. DR who agreed to the submission of Ld. AR. In view of this, the appeal is proceeded with for hearing, there being no delay.

3. The facts relevant to the present appeal as culled out from the records are such that the assessee filed return of income declaring a total income of Rs. 10,93,130/- after claiming deduction u/s 80-IB(10) of Rs. 29,27,855/-. During scrutiny-proceeding, the Ld. AO observed that the deduction as claimed by the assessee was not allowable and therefore the Ld. AO made an addition of Rs. 29,27,855/-. Simultaneously, the Ld. AO initiated proceeding for imposition of penalty u/s 271(1)(c) which came to be decided vide the penalty-order dated 09.11.2017 by imposition of penalty of Rs. 10,00,000/-. Being aggrieved, the assessee filed appeal to Ld. CIT(A). However, the Ld. CIT(A) did not grant any relief and therefore the assessee has come in appeal before us.

4. Ld. AR appearing on behalf of assessee carried us to the various documents relating to the penalty-proceeding conducted by Ld. AO as under:

(a) Initially, the Ld. AR carried us to the show-notice dated 19.12.2011 issued by Ld. AO u/s 271(1)(c), placed at Page No. 1 of the Paper-Book, which reads as under:

**“In connection with the penalty-proceeding u/s 271(1)(c) for the assessment-year(s) 2009-10, you are requested to attend my office on 18/1/2012 to show cause why penalty should not be imposed. However, if you do not wish to be heard in person in this regard, you may submit our written submissions so as to reach me by the above date which will be considered before disposal of the matter.”**

Reading the contents of this notice, Ld. AR submitted that the notice does not specify any charge against the assessee. Ld. AR also referred to the notices dated 31/05/2012, 13/03/2015 and 23/06/2017 issued by Ld. AO in sequel to the aforesaid notice dated 19/12/2011 and demonstrated that even in those subsequent notices also, there is no specific charge against the assessee.

- (b) Ld. AR then drew our attention to Page No. 5 of the assessment-order where the Ld. AO has mentioned:

**“The assessee is, therefore, not eligible for deduction u/s 80IB(10). The assessee has claimed deduction u/s 80IB for an amount of Rs. 29,27,855/- and the same is, therefore, disallowed.**

**As the assessee has concealed its income to the extent of Rs. 29,27,855/-, penalty u/s 271(1)(c) are being initiated separately for concealed the income and furnished inaccurate particulars of income.”**

- (c) Thereafter, the Ld. AR carried us to Page No. 7 of the Penalty-Order where the Ld. AO has mentioned:

**“7. The assessee furnished inaccurate particulars of its income to the extent of Rs. 29,27,855/-, hence by committing so has attracted the provisions of Sec. 271(1)(c) of the ‘Act’. Accordingly penalty u/s 271(1)(c) of the ‘Act’ is invoked and is worked out as under:-**

**The penalty leviable u/s 271(1)(c) is computed as under:-**

**The total concealed income :                      Rs. 29,27,855/-”**

5. With the support of above documents, the AR demonstrated that (i) the Show-Cause notice does not contain any charge at all; (ii) The assessment-order contains two charges, viz. the assessee has “concealed the income and furnished inaccurate particulars of income”; and (iii) The penalty-order at one place states that the assessee “has furnished inaccurate particulars” but on a later part, it computes penalty for “concealed income”. Ld. AR submitted that the Ld. AO himself is not sure about the default committed by the assessee and the exact basis of imposition of penalty.

6. Ld. AR submitted that there are innumerable decisions of the Hon’ble Courts and ITAT where it has been loudly held that if the show-cause notice does not specify the specific charge of default committed by the assessee, the whole proceeding are invalid. Ld. AR relied upon the decision of Hon’ble Jurisdictional High Court of M.P. in the case of **Pr.CIT-I, vs. Kulwant Singh Bhatia, ITA No. 9 to 14 of 208, order dated 9<sup>th</sup> May 2018**, wherein it was held as under:

**“8. In the case of CIT V/s. Manjunatha Cotton Ginning Factory (supra), it was observed by the Karnataka High Court in para 59 that the practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initiated presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the provisions have to be held to be strictly construed, notices issued under Section 274 should satisfy the grounds, which he has to meet specifically. Otherwise, principle of natural justice is offended if the show cause notice is vague. Even in the matter of search case where penalty is levied under Explanation 5A to Section 271(1)(c), it was held by the Karnataka High Court that the show-cause notice under Section 274 was defective as it does not spell out the ground on which the penalty is sought to be imposed and consequently penalty imposed was cancelled. The decision of CIT V/s. Manjunatha Cotton Ginning Factory (supra) was further followed by the Karnataka High Court in the case of CIT V/s. SSA'S Emerald Meadows, (2016) 73 taxman.com 248 (SC) / dated 23.11.2015 (ITA 380/2015), the High Court has dismissed the appeal of the revenue by observing that the Tribunal has allowed the appeal of**

**the assessee holding that the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Act of 1961 was bad-in-law as it did not specify which limb of Section 271(1)(c) of the Act of 1961, the penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars. The Tribunal while allowing the appeal of the assessee, had relied on the decision of the Division Bench of Karnataka High Court decision in the case of CIT V/s. Manjunatha Cotton Ginning Factory (supra). It is further pointed out that the SLP filed by the Deptt. before the Apex Court on 5.8.2016 in the matter of CIT V/s. SSA'S Emerald Meadows (supra) was dismissed. In the case of CIT V/s. Suresh Chandra Mittal, (2000) 251 ITR 9 (SC), the Apex Court has upheld the decision of M.P. High Court wherein, in similar circumstances, it was held that the initial burden lies on the revenue to establish that the assessee had concealed the income or had furnished inaccurate particulars of such income. In the present case, in show-cause notice the Assessing Officer has not specified specifically charges, there was no such mention.**

**11. 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 the learned Tribunal has rightly relying on the decision of CIT V/s. Manjunatha Cotton Ginning Factory (supra) and CIT V/s. SSA'S Emerald Meadows (supra) 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.”**

7. With these submissions, the Ld. AR contended that the whole penalty-proceeding conducted by Ld. AO is illegal and unsustainable. Hence, the penalty-order passed by Ld. AO deserves to be quashed.

8. Ld. DR relied upon the orders of lower authorities and argued that the penalty should be upheld.

9. We have considered the submissions of both sides, perused the record and considered the legal judgement cited before us. On perusal of various documents pointed out by Ld. AR, we observe that the Ld. AO has not specified any specific charge of default in the show-cause notice. Moreover,

in the assessment-order / penalty-order, the Ld. AO is himself not sure about the default committed by the assessee which is clearly visible from the fact that somewhere he has mentioned both charges, somewhere he has mentioned one charge. Therefore the whole proceeding of penalty conducted by Ld. AO is illegal as per the decision of Hon'ble jurisdictional High Court in **Kulwant Singh Bhatia (supra)**. The Ld. DR, though supported the orders of lower authorities, yet could not controvert the submission of Ld. AR. Therefore, we are satisfied that the penalty imposed by Ld. AO cannot be sustained. Accordingly, we quash the penalty-order passed by Ld. AO.

**10. In the result, this appeal of assessee is allowed.**

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 28.07.2022.

Sd/-

(MADHUMITA ROY)  
JUDICIAL MEMBER

Indore

दिनांक /Dated : 28.07.2022

Patel/Sr. PS

Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

*By order*  
*Sr. Private Secretary*  
*Income Tax Appellate Tribunal*  
*Indore Benches, Indore*