

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.65/Asr/2021  
Assessment Year: 2006-07**

M/s Orthonova Hospital Nakodar Road, Near Nari Niketani, Jalandhar. [PAN: AAAFO7491B] <b>(Appellant)</b>	<b>Vs.</b>	ITO, National Faceless Appeal Centre (NFAC), Delhi.  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>None.(Written Submission)</b>
<b>Respondent by</b>	<b>Ms. Amanpreet Kaur, Sr.DR</b>

<b>Date of Hearing</b>	<b>27.09.2022</b>
<b>Date of Pronouncement</b>	<b>30.09.2022</b>

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax(Appeals), NFAC, Delhi, [in brevity the CIT(A)] bearing appeal No.DIN & Order No.ITBA/NFAC/S/250/2021-22/1034619248(1), date of order 04.08.2021, the order passed u/s 250 of the Income Tax Act 1961, [in

brevity the Act] for A.Y. 2006-07. The impugned order was emanated from the order of the Id. Assistant Commissioner of Income Tax, Circle-1, Jalandhar, (in brevity the AO) order passed u/s 271(1)(c) of the Act, date of order 11.05.2020.

2. The brief fact of the case is that the assessment was completed and the demand was levied. The penalty was initiated u/s 271(1)(c) in relation to this demand. The grievance of the assessee is that the notice, issued by the Id. AO was defective & without jurisdiction. The notice was not specified by nature of penalty whether the concealment of income or inaccurate particular of income. The sanctity of the notice was challenged before the Id. CIT(A) but the Id. CIT(A) upheld the order of the Id. AO and dismissed the assessee's legal ground.

3. Aggrieved assessee filed an appeal before us.

4. During the appeal hearing, none was present on behalf of the assessee. The matter was taken up with the consent of the Id. Sr. DR for adjudication. The observation of the Id. CIT(A) vide para 7 which is reproduced as below:

*“7. I have considered the facts and circumstances of the case, submissions of the appellant and material available on record and various case laws, the appellant has challenged that, the Assessing Officer has erred in imposing penalty without levelling specific charge in the notice as to whether*

*assessee has concealed particulars of income or furnished inaccurate particulars of income as in the show cause notice, the AO has not struck off the words 'and/or'. The appellant contention is not acceptable because in the Assessment order as well as the penalty order the AO has clearly mentioned that the appellant has not furnished the inaccurate particulars of income therefore the penalty is levied. Further, the appellant has not produced any details in respect of his claim during the assessment proceedings or appellate proceedings. The Hon'ble Supreme Court in the case of Union of India Vs Dharmendra Textile Processors &Ors [306 ITR 277] has held that the explanation appended to section 271(1)(c) of the I.T. Act entirely indicate the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing the return. It was further held that the enactment of Sec 271(1)(c) read with explanation indicates that the said section has been enacted to provide for a remedy for loss of revenue. It was further observed that the penalty under section 271(1)(c) is a civil liability and wilful concealment is not an essential ingredient for attracting civil liability and assessee is liable to be penalized u/s 271(1)(c) of the I.T. Act.”*

5. We heard the submissions of Sr. DR. and considered both the orders of revenue authorities. The different High Courts and the Tribunal already decided the issue in favour of the assessee related to issuance of notice u/s 271(1)(c) of the Act. Section 271(1)(c) is two limbs concealed income and inaccurate particulars of the income. Before issuing the notice, the ld. AO should specify the limb related to penalty proceedings. This particular notice it is a self-defective and the ld. AO did not mention the nature of concealment in the notice issued u/s 274/271(1)(c). The counsel laid down that in the absence of such specific notice, the notice would be invalid as held in various judicial pronouncements including the decision of Hon'ble **Karnataka High Court in CIT V/s SAS's Emerald Meadows (73 Taxmann.com 241)** against which Special Leave Petition (SLP) filed by the department stood dismissed by Hon'ble Supreme Court which is reported as **73 Taxmann.com 248**. The notice u/s 274/271(1)(c) of the Act is not carrying the specific limb. Therefore, this is a case where both the parts of the offences i.e., concealment of income as well as furnishing of inaccurate particulars of income were involved. The decision of **Jaipur Tribunal (Third Member) in the case of Grass Field Farms and Resorts P. Ltd. (159 ITD 31)** was referred to confirm the impugned penalty.

Finally, respectfully following the binding judicial precedents as cited aforesaid, we are of the considered opinion that the impugned penalty is not sustainable on legal grounds. Hence, the penalty order passed U/s 271(1) (c ) is quashed.

6. In the result, the appeal bearing **ITA No.65/Asr/2021** is allowed.

**Order pronounced in the open court on 30.09.2022**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order