

**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. 232/Asr/2018
Assessment Year: 2008-09

Sh. Onkar Singh
S/o Sh. Atma Singh
VPO Sham Chaurasi,
Hoshiarpur

[PAN: DXSPS 2061F]

(Appellant)

V. Income Tax Officer,
Ward-3, Hoshiarpur

(Respondent)

Appellant by : Sh. Y. K. Sud, CA

Respondent by : Sh. Ravinder Mittal, Sr. DR

Date of Hearing : 21.02.2023

Date of Pronouncement : 28.02.2023

ORDER

Per Dr. M. L. Meena, AM:

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-1, Jalandhar dated 30.03.2018 in respect of Assessment Year 2008-09.

2. At the outset, the Id. counsel for the assessee submitted that the Id. CIT(A)-1, Jalandhar has dismissed the appeal of the assessee filed against the levy of penalty u/s 271(1)(c) vide order dated 30.03.2018 by passing a non speaking order and ignoring the judgment of Hon'ble Apex Court in Special Leave to Appeal (CC No. 11485/2016) arising out of impugned final judgment and order dated 23.11.2015 in ITA No. 380/2015 passed by the Hon'ble High Court of Karnataka at Bengaluru in the case of CIT & Anr. v. M/s SSA's Emerald Meadows (APB pgs. 4 to 8), that the assessee's appeal is squarely covered by the judgment of Hon'ble Apex Court because the AO issued a defective notice u/s 274 r.w.s. 271(1)(c) of the Income Tax Act, 1961 for assessment year 2008-09 wherein he did not specify under 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. Photocopy of the notice issued u/s 274 r.w.s. 271(1)(c) of the Act (APG pg. 9) is reproduced as under:

**GOVERNMENT OF INDIA**

Office of the Income Tax Officer, Ward -3, Hoshiarpur.
1st Floor, Aayakar Bhawan, Mall Road, Hoshiarpur.

**NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(c) OF THE
INCOME TAX ACT, 1961**

To

Shri Onkar Singh
S/o Shri Atma Singh
Near Telephone Exchange,
Vill & P.O. Sham Chaurasi
Distt. Hoshiarpur.
PAN- DXCPS2061F

Whereas in the course of proceedings before me for the assessment Year 2008-09, it appears to me that you:-

- (a) * have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Income tax Act, 1922 or which you were required to furnish under Section 139(I) or by a notice given under Section 139(2)/148 of the Income-tax Act 1961, No.....dated.....or have without reasonable cause failed to furnish it within the time allowed and in the manner required by the said Section 139(I) or by such notice.
- (b) * have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/143(2) of the Income -tax Act, 1961. No.....Dated
- (c) * have concealed the particulars of your Income orfurnished inaccurate particulars of such Income.

You are hereby requested to appear before me at **11:00 A.M** on **07.04.2016** and show cause why an order imposing a penalty on you should not be made under Section 271(1)(c) 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 against you under Section 271(1)(c) of the Income Tax Act, 1961.



Yours faithfully,

Santosh
(Santosh Kumar Yadav)
Income Tax Officer
Ward-3, Hoshiarpur

3. The counsel has further placed the reliance on the judgment of Hon'ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory [2013] 359 ITR 565 and the latest judgment of Hon'ble Bombay High Court in the case of Mohammad Farhan Akhtar v. DCIT 43 ITR 1.

4. The Id. DR stand by the order of the Id. CIT(A), however, he failed to file any submission or citation in rebuttal to the contention raised by the Id. counsel.

5. Having heard both the sides, perusal of material on record and case law cited before us, it is admitted fact that the AO issued a defective notice u/s 274 r.w.s. 271(1)(c) of the Income Tax Act, 1961 for assessment year under consideration without specifying the limb of the section for initiating the penalty proceedings as evident from the notice as above. It is well settled law by the higher judicial forum that the levy of penalty on the basis of defective notice issued u/s 274 r.w.s. 271(1)(c) of the Income Tax Act is liable to be bad in law. In the instant case, the AO did not specify under 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 inaccurate particulars of income. Thus, such a technical error

reveal non application of mind by the AO in initiating and levying penalty u/s 271(1)(c).

6. Accordingly, we hold that the order of the CIT(A)-1, Jalandhar confirming the levy of penalty u/s 271(1)(c) is illegal and bad in law. Hence, it is liable to be quashed. Accordingly, the penalty levied u/s 271(1)(c) is hereby deleted.

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

Order pronounced in the open court on 28.02.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

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