

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 230/JP/2022  
निर्धारण वर्ष/Assessment Year : 2014-15.

Shri Tinku Kumar Mittal, C-609, Felicity Emerald, Swag Farm, New Sanganer, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 6(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AKNPM 2232 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Ashok Kanodia, C.A.  
राजस्व की ओर से / Revenue by : Ms Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 22/03/2023  
उदघोषणा की तारीख / Date of Pronouncement: 20/04/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order of Id. CIT(A),  
National Faceless Appeal Centre, Delhi dated 01.04.2022 for the assessment year  
2014-15. The assessee has raised the following grounds of appeal :-

1. Under the facts and circumstance of the case learned CIT appeal was not justified while confirming the penalty imposed u/s 271(1)(c) of the Income Tax Act, 1961.
2. Under the facts and circumstance of the case learned CIT appeal was not justified while confirming the penalty u/s 271(1)(c) without ensuring the service of notice which were never received by the appellant.
3. Under the facts and circumstance of the case learned CIT appeal not justified while confirming the penalty amounting to Rs. 1,40,600/- u/s 271(1)(c).

4. The assessee craves leave to add/alter any of the ground of appeal before or at the time of hearing.

The appeal filed by the assessee is delayed by 1 (one) day. The Id. A/R for the assessee has filed an application dated 18.06.2022 explaining the reasons for filing the appeal delayed and requested condonation of delay on the ground of sickness of the assessee and also on technical problem at portal. The application of the Id. A/R is supported by an Affidavit of the assessee and also medical prescription of the Doctor.

2. Having considered the rival submissions as well as going through the contents of the application and affidavit of the assessee along with medical prescription, I am satisfied that the assessee has explained a reasonable cause for not filing the appeal within the period of limitation. Accordingly, I condone the delay of 1 (one) day in filing the present appeal.

**Ground Nos. 1 to 3 relates to confirming the penalty imposed under section 271(1)(c) of the I.T. Act, 1961.**

3. The solitary grievance of the assessee is that Id. CIT (A) erred in confirming the penalty levied under section 271(1)(c) of the IT Act at Rs. 1,40,524/-. At the outset, the Id. A/R for the assessee submitted that while passing the final order of penalty, no notice in this regard had been received by the appellant, therefore, order passed under section 271(1)(c) of the IT Act are not justified. The Id. A/R further submitted that the AO has issued notice on 19.12.2016, the content of the notice issued under section 274 read with section 271(1)(c) shows that AO is not confirm whether this is the case of *concealment of income or furnishing of inaccurate*

*particulars of income.* Thus the Id. A/R submitted that since the notice issued u/s 274 read with section 271(1)(c) of the Act was defective as procedures laid down in section 274 has not been followed, therefore, the penalty proceedings deserves to be held as invalid and void ab initio. Referring to the show cause notice dated 19.12.2016, the Id. A/R submitted that the AO has not specified the limb and default for which the penalty under section 271(1)(c) was initiated. The Id. A/R has thus contended that when the AO was not sure about the default of the assessee then the penalty order passed under section 271(1)(c) is not valid and liable to be quashed. In support of his contention, the Id. A/R submitted that the case of the assessee stands squarely covered by the decision of Kolkata Bench of the Tribunal in the case of Anchal Towers Pvt. Ltd. vs. ITO Ward 4(3) Kolkata in ITA No. 260/Kol/2022 dated 09.11.2022 wherein the Tribunal followed the judgment of Hon'ble Kolkata High Court in the case of PCIT vs. Brijendra Kumar Poddar, IA No. GA/2/2018 dated 23.11.2021.

4. On the other hand, the Id. D/R supported the orders of the revenue authorities.

5. We have heard rival submissions, perused the material on record and gone through the orders of the authorities below. Penalty of Rs. 1,40,524/- was levied on the assessee under section 271(1)(c) of the IT Act, 1961 for furnishing inaccurate particulars of income. Necessary satisfaction was made by the AO in the assessment order. However, for the purpose of initiating proceedings u/s 271(1)(c) of the Act notice under section 274 of the Act was issued on 19.12.2016. In this notice, AO

mentioned " *have concealed the particulars of your income or furnished inaccurate particulars of such income.*"

5.1 Perusal of this notice shows that AO has mentioned both the charges in the notice rather than raising a specific charge on the assessee. Such type of notices where specific charges are not leveled against the assessee, are found to be defective by various Hon'ble Courts. The AO has not specified the default and limb for which the penalty was proposed to be levied. Therefore, the AO has initiated the penalty proceedings for concealment of particulars of income or furnishing inaccurate particulars of income. The AO was not sure about the default of the assessee whether it was concealment of particulars of income or furnishing inaccurate particulars of income. As regards the satisfaction recorded by the AO in the assessment order, it does not support the case of the revenue as the AO has stated that the penalty proceedings are initiated for inaccurate particulars whereas in the case in hand when the income was not at all declared in the return of income, then it is a case of concealment of particulars of income and not furnishing inaccurate particulars of income. In the penalty order, the AO has again stated in para 6 as under :-

"6. *In view of the above discussion, it is established that the assessee has furnished inaccurate particulars of income without any reasonable cause and liable for penalty in view of the Explanation-1 below the section 271(1)(c). I am satisfied that, it is a fit case for levy of penalty. The minimum & maximum leviable penalty is computed as under :-*

1.	Total tax determined on total income of Rs. 6,64,310/- (Rs. 2,14,310/- R/I + Rs.	Rs. 1,40,524/-
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	<i>4,50,000/- addition confirmed by CIT (A)</i>	
<i>2.</i>	<i>Tax on return income of Rs. 2,14,310/-</i>	<i>Nil</i>
<i>3.</i>	<i>Tax on concealed income (1-2)</i>	<i>Rs. 1,40,524/-</i>
<i>4.</i>	<i>Minimum leviable penalty (100%)</i>	<i>Rs. 1,40,524/-</i>
<i>5.</i>	<i>Maximum leviable penalty (300%)</i>	<i>Rs. 4,21,572/-</i>

Thus the AO has again stated that the assessee has consciously made the concealment by furnishing inaccurate particulars of his income. The statement of the AO is very vague and mixing up both the default of concealment as well as furnishing inaccurate particulars of income. Therefore, the finding of the AO even in the impugned penalty order passed under section 271(1)(c) is not definite or correct. Accordingly, when the AO was not clear about the default of the assessee whether it is concealment of particulars of income or furnishing inaccurate particulars of income either at the stage of recording the satisfaction or at the time of issuing the show cause notice under section 274 of the Act or at the time of passing the penalty order under section 271(1)(c), then the penalty levied on a charge which is not correct is not sustainable in law. Hence in the facts and circumstances of the case, the impugned order passed by the AO under section 271(1)(c) is invalid as the AO was not certain about the default and charge for which the penalty proceedings were initiated and finally the penalty was levied.

5.2. We, therefore, following the decision of Coordinate Bench of the ITAT Kolkata in the case of Anchal Towers Pvt. Ltd., supra, wherein reliance has been placed on the judgment of Hon'ble Kolkata High Court in the case of Brijendra Kumar Poddar, supra, are inclined to hold that since the notice issued under section 274 of the Act is defective, penalty proceedings are invalid and bad in law and liable to be quashed.

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

Order pronounced in the open court on 20/04/2023.

Sd/-  
(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 20/04/2023.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant-Tinku Kumar Mittal, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO Ward 6(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 230/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

