

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(CONDUCTED THROUGH VIRTUAL COURT)**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER &
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

I.T.A. No.195/Ind/2022
(Assessment Year: 2008-09)

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| Abhinav Patidar E-4/382, Arera Colony, Bhopal-462016 | Vs. | ACIT-2(1), Bhopal-462016 |
| PAN No. AIWPP7782N | | |
| (Appellant) | .. | (Respondent) |

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| Appellant by : | Shri Pramod Kumar Jain, A.R. |
| Respondent by : | Shri Ashish Porwal, Sr. D.R. |

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| Date of Hearing | 23.03.2023 |
| Date of Pronouncement | 10.04.2023 |

ORDER

PER SUCHITRA KAMBLE - JM:

This appeal is filed by the assessee against the order dated 29.06.2022 passed by the Ld. CIT(A), National Faceless Appeal Centre (in short “NFAC”), Delhi for A.Y. 2008-09.

2. The grounds of appeal raised by the assessee read as under:

“1. On the facts and in the circumstances of the case and in law ld. lower authorities erred in invoking provisions of section 271(1)(c) of the Act and levying penalty of Rs. 6,69,100 in contravention of provisions of section 275(1) of the Act and ignoring the fact that quantum appeal of the appellant is pending for adjudication before the National Faceless Assessment Center, Delhi.

2. On the facts and in the circumstances of the case and in law imposition of penalty is illegal in as much as vague and cryptic show cause notice was issued to appellant u/s. 274 without making him aware of the specific charge leveled against him and therefore, in view of the decision of Karnataka High Court in the case of CIT vs. Manjunath Cotton Ginning Factory 359 ITR 565, the penalty so imposed by the ld. lower authorities deserves to be deleted.

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3. *That on the facts and in the circumstances of the case and in law ld. lower authorities grossly erred in levying penalty without considering the material fact that appellant had neither concealed nor furnished inaccurate particulars of any income for the year under consideration and thus he was not liable for the penalty u/s 271(1)(c).*

4. *On the facts and in the circumstances of the case and in law ld. lower authorities erred in levying penalty on the basis of addition made by invoking deeming provisions under section 2(22)(e) and no penalty in such circumstances was leviable.*

5. *That without prejudice to the above grounds of appeal, Ld. lower authorities grossly erred in law by imposing penalty without first reaching to any objective satisfaction in the assessment order/penalty order contemplated under the provisions of section 271(1).*

6. *Appellant craves leave to add, alter, amend, modify or withdraw any ground of appeal before or at the time of hearing of the appeal.”*

3. The return of income for A.Y. 2008-09 was filed on 12.03.2009 declaring income of Rs. 1,08,560/- and agriculture income at Rs. 8,33,354/-. The case was reopened after recording the reasons and the assessment was completed under Section 143(3) r.w.s. 147 of Income Tax Act, 1961 on 31.03.2014 and income was assessed at Rs. 20,80,050/-. The penalty proceedings were initiated u/s 271(1)(c) of the Act and show cause notice was issued on 31.03.2014 for furnishing inaccurate particulars of income. The assessee did not respond the notice. The Assessing Officer thereafter imposed penalty of Rs. 16,69,100/-for furnishing inaccurate particulars of income.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessment order did not gave any reasons/satisfaction for initiation of the penalty u/s 271(1)(c) of the Act. The Ld. AR further submitted that the penalty order passed by the Assessing Officer is without giving sufficient opportunity to the assessee for filing the details. The Ld. AR further submitted that the CIT(A) also ignored these

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aspects and without giving any opportunity of hearing dismissed the appeal of the assessee.

6. The Ld. DR relied upon the assessment order, the penalty order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. From the perusal of the order of the CIT(A), it appears that the CIT(A) has issued notice of hearing but the details of the said notice as well as the service of the said notice to the assessee are not mentioned in the order. Thus, it is observed that the CIT(A) has not given sufficient opportunity of hearing to the assessee at the appellate proceedings for presenting his case. Therefore, it will be appropriate to remand back the matter to the file of the CIT(A) for proper adjudication of the issues contested therein on merit as per law. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

8. In result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced on 10/04/2023 by placing the result on the Notice Board as per Rule 34(4) of the Income Tax (Appellate Tribunal) Rule, 1963.

This Order pronounced in Open Court on /03/2023

Sd/-
(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER
Ahmedabad; Dated 10/04/2023
TANMAY, Sr. PS

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,इंदौर/ DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

**(Sr. Private Secretary)
ITAT, Indore**

1. Date of dictation 27.03.2023(Typed in her computer)
2. Date on which the typed draft is placed before the Dictating Member 27.03.2023
3. Other Member.....
4. Date on which the approved draft comes to the Sr.P.S./P.S .03.2023
5. Date on which the fair order is placed before the Dictating Member for pronouncement .03.2023
6. Date on which the fair order comes back to the Sr.P.S./P.S .03.2023
7. Date on which the file goes to the Bench Clerk .03.2023
8. Date on which the file goes to the Head Clerk.....
9. The date on which the file goes to the Assistant Registrar for signature on the order.....
10. Date of Despatch of the Order.....