

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.362/Kol/2023  
Assessment Year: 2015-16**

Bablu Roy Rampur, P.O. Gobindapur Maheshtalla, Kolkata- 700141 (PAN: ADIPR9830L)	Vs.	Income Tax Officer, Ward- 33(2), Kolkata
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri R. S. Ghosal and Shri V. N. Dutta, AR  
Respondent by : Shri Manas Mondal, Addl. CIT, Sr. DR

Date of Hearing : 30.05.2023

Date of Pronouncement : 31.05.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assesseeis against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2022-23/1049786835(1) dated 15.02.2023 against the penalty order of ITO, Ward-33(2), Kolkata u/s. 271(1)(c)of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 29.05.2018 for AY 2015-16.

2. Ground raised by the assessee are reproduced as under:

*“1. For that the initiation of the penalty as well as the penalty notice u/s. 273/271(1)(c) of the Act is not accordance with the law, void ab initio, and bad in law.*

*2. For that the penalty u/s. 271(1)(c) of the Act is not tenable in law and is opposed to requirement of law and bad in law.*

*3. For that the imposition of penalty of Rs.8,62,269/- u/s. 271(1)(c) of the Act is neither tenable in law nor in facts.*

*4. For that the appellant craves leave to amend, alter, add, delete or substitute any other grounds of appeal before or at the time of hearing of the appeal.”*

3. Brief facts of the case are that assessee is a Government Contractors (Civil) and is engaged in the business of contract related work in the name of M/s. Sree Ram Construction. He filed the return on 30.09.2015, reporting total income of Rs.9,82,420/- which was assessed at Rs.38,11,160/-.Ld. AO made an addition of Rs.28,28,740/- on account of difference of market value as per stamp valuation authority and purchase consideration in respect of purchase of house with land. Assessee did not file any appeal and paid the tax demanded. Ld. AO imposed penalty amounting to Rs.8,72,269/- u/s.271(1)(c) of the Act. In the assessment order, Ld. AO while initiating penalty proceedings, noted that penalty is being initiated separately for furnishing of inaccurate particulars of income. In the impugned penalty order passed by the Ld. AO, while concluding,ld. AO held that assessee had concealed the income by furnishing inaccurate particulars of income and thus imposed the aforesaid penalty.

3.1. Before the Ld. CIT(A), assessee submitted that Ld. AO had, in the notice u/s 274 r/w section 271(1)(c), failed to specify the particular condition or limb for which penalty proceedings are initiated. He stated that it was the duty of ld. AO to make specific mention as to the violation of which limb and condition, that is, whether it was for “the concealment of particulars of income” or for "the furnishing of inaccurate particulars of income" that the penalty proceedings were being conducted and the assessee was being put to hearing through the said notice. Ld. AO has not done this in the present case and for such a failure, the entire penalty proceedings become

void and penalty levied in this case, deserves to be deleted. Before us, assessee has furnished a copy of the notice u/s 274 r/w section 271(1)(c), as issued by the ld. AO which is placed on record.

4. Fact that ld. AO had indeed failed to specify the particular limb under which the penalty was proposed to be imposed is not only apparent from the copy of the notice itself, but is also borne out by the statements in this relation made by the ld. AO, in his assessment and penalty orders. In the impugned penalty order, ld. AO while concluding the proceedings has stated that assessee concealed the income. Contrary to this, ld. AO while initiating the penalty proceedings recorded his satisfaction by putting the charge of furnishing of inaccurate particulars on the part of the assessee. To put this in other words, while initiating the penalty proceedings, the charge stated in the assessment order is 'furnishing of inaccurate particulars of income' and while imposing penalty in the impugned order, the charge stated is 'concealment of income'.

5. Before us, ld. Counsel invited the attention of the Bench to the notice issued u/s. 274 read with section 271(1)(c) of the Act, dated 30.11.2017, to point out that no specific charge has been mentioned by the ld. AO in the notice. The said notice is reproduced as under:

**Notice under Section 271(1)(c) of the Income Tax Act, 1961****NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961**

Date : 30/11/2017

**PAN: ADIPR9830L**

To ,

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Shri Bablu Roy-----  
Rampur, Post: Govindapur,-----  
Maheshtala , Kolkata – 700 141.  
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Sir/Madam,

Whereas in the course of proceedings before me for the Assessment Year **2015-16** it appears to me that you:-

~~\* 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(1) or by a notice given under Section 139(2)/148/115WD(1) of the Income Tax Act, 1961, No. \_\_\_\_\_ dated \_\_\_\_\_ or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.~~

~~\* 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.~~

\* **have concealed** the particulars of your Income or furnished inaccurate particulars of such income.

You are hereby ordered to appear before me at **03/01/2018** on **11:30 A.M.** at 10B, MIDDLETON ROW, 3<sup>RD</sup> FLOOR, KOLKATA - 700 071 and show cause why an order imposing a penalty on you should not be made under Section 271 of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through an authorized Representative, you may show cause in writing on or before the said date which will be considered before any such order is made under Section 271 of the Income Tax Act, 1961.

**(OFFICE SEAL)**

*dm . 30.11.17*  
**I.T.O., Ward -33(2), Kolkata**  
**10B, Middleton Row, Kolkata -700 071.**

6. Ld. Counsel reiterated the submissions made before the ld. CIT(A) which are not repeated for the sake of brevity.
7. Ld. Sr. DR relied on the order of the authorities below.

8. We have heard the rival contentions and given our thoughtful consideration on the subject matter. The facts stated above are undisputed and uncontroverted. Further, present matter in this appeal is squarely covered by several decisions of various authorities including Hon'ble High Courts and Coordinate Benches of ITAT including the jurisdictional ITAT. Foremost decision by Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565, while speaking about the procedure for the issue of notice u/s. 274 of the Act, has observed as under:

*“(Para 59).....*

*Though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in section 271 should be made known about the grounds on which they intend imposing penalty on him as section 274 makes it clear that the assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in section 271(1)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100 per cent. to 300 per cent. of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under section 274 should satisfy the grounds which he has to meet specifically. Otherwise, the principles of natural justice is offended if the show-cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.”*

8.1. This decision has been relied upon by the Hon'ble Karnataka High Court in the case of SSA Emerald Meadows, to take a similar view. Hon'ble Supreme Court has dismissed the appeal of department in the case of CIT and others vs. SSA Emerald Meadows [2016] 73 taxmann.com 248 (SC) by stating that no merits have being found in the Department's SLP against the order of the Hon'ble High Court of Karnataka.

8.2. In fact, this position of mandatory need for specifying the correct limb under which penalty u/s 271(1)(c) is proposed to be imposed has been affirmed to be valid even in those cases where the assessee has not challenged the order for assessment and has paid the corresponding taxes and interest. In the present case before us, assessee has not gone into appeal for the quantum addition and has discharged his tax liability arising out of the assessment completed. This aspect has also been dealt by the Hon'ble Karnataka High Court, in the case of Manjunatha Cotton and Ginning Factory (supra) who has stated that merely because the assessee has not challenged the order for assessment and has paid the corresponding taxes and interest, it would not be sufficient reason either to initiate or impose penalty u/s 271(1)(c). Once the initiation is not automatic, it stands to reason that the proper procedure for initiation of penalty proceedings would necessarily have to be followed. One of the necessary conditions to be satisfied in this context, as already discussed above, is the specification of the particular limb under which penalty is proposed to be imposed. This has admittedly not been done by the AO in the present appeal as two different charges are stated in the two orders, viz. furnishing of inaccurate particulars in the assessment order and concealment of income in the impugned penalty order.

8.3. In the decision by Coordinate Bench of ITAT Kolkata, in the case of ITO vs. Ambey Retailers Pvt. Ltd. in ITA No.2104/Kol/2017 dated 05.09.2018, came to the following conclusion:

*"15. We have already observed that the show cause notice issued in the present case u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income. The show cause notice u/s 274 of the Act does not strike out the inappropriate words. In these circumstances, we are of the view that imposition of penalty cannot be sustained. The plea of the Id. Counsel for the assessee which is based on the decisions referred to in the earlier part of this order has to be accepted. We therefore hold that imposition of penalty in the present case cannot be sustained and the same is directed to be cancelled."*

8.4. In the present facts and circumstances of the case, ratios of the abovementioned decisions are squarely applicable. Notice for the imposition of the penalty, being bad in law, automatically vitiates the order for imposition of impugned penalty of Rs.8,62,269/-. Therefore, we delete the penalty so imposed. Grounds taken by the assessee are allowed.

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

Order pronounced in the open Court on 31<sup>st</sup>May, 2023.

**Sd/-**  
**(Rajpal Yadav)**  
**Vice President**

**Sd/-**  
**(Girish Agrawal)**  
**Accountant Member**

**Dated: 31<sup>st</sup>May, 2023**

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent
  3. CIT(A), National Faceless Appeal Centre (NFAC), Delhi
  4. CIT ,
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata