

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.1670/Del./2018
(ASSESSMENT YEAR : 2011-12)**

Jatinder Pal Singh,
C/o D-6/13, Vasant Vihar,
New Delhi – 110 057.

vs.

DCIT,
Central Circle 18,
New Delhi.

(PAN : ALPPS9874G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rakesh Gupta, Advocate
Shri Somil Agarwal, Advocate
REVENUE BY : Shri Waseem Arshad, CIT DR

Date of Hearing : 19.06.2023
Date of Order : 22.06.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id. CIT (A)-14, New Delhi dated 15.12.2017 pertaining to the AY 2011-12 confirming the order passed by the Assessing Officer under section 271(1)(c) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. Although assessee has raised various grounds but Id. Counsel for the assessee began with an additional ground which reads as under :-

“That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the penalty order passed by

Ld. AO on the ground that the charge on penalty notice dated 28.03.2013 was not specified/clear as to whether penalty is being initiated for "concealment of income" or for "furnishing inaccurate particulars of income".

3. For admission of the additional ground, ld. Counsel has submitted the following case laws :-

- CIT vs. Sinhgad Technical Education Society, (2017) 397 ITR 0344 (SC).
- NTPC Ltd. vs. CIT, (1998) 229 ITR 0383 (SC).
- VMT Spinning Co. Ltd. vs. CIT & Anr., (2016) 389 ITR 0326 (P&H).
- CIT vs. Sam Global Securities, (2014) 360 ITR 0682 (Del.).
- Siksha vs. CIT, (2011) 336 ITR 0112 (Orissa).
- Inventors Industrial Corporation Ltd. vs. CIT, (1992) 194 ITR 0548 (Bom.).

4. Since the legal grounds raised goes to the root of the matter we admit the same on the touchstone of the above said case laws cited by the ld. Counsel of the assessee.

5. Canvassing his plea, ld. Counsel for the assessee stated that the issue is squarely covered in favour of the assessee by the decision of Hon'ble jurisdictional High Court and Hon'ble Supreme Court inasmuch as the penalty notice has not specified the charge whether there is concealment of income or furnishing of inaccurate particulars of income. He submitted that in such a situation, the penalty levied is *void ab initio*. The submission of the ld. Counsel of the assessee in a summarized manner is as under :-

“Additional ground has been moved in respect of vague and non-specific penalty notice u/s 271(1)(c).

In this case, penalty notice issued is non-specific and inapplicable clause has not been struck off.

PB 262 is penalty notice dated 28.03.2013 showing both the charges i.e concealed the particulars of income and furnishing inaccurate particulars of income.

Page 12-13 of assessment order show that satisfaction for initiating penalty was recorded for both the charges i.e. concealed the particulars of income and furnishing inaccurate particulars of income.

Page 3 of the penalty order also mentions both the charges i.e. concealed the particulars of income and furnishing inaccurate particulars of income.

Page 11 of Ld. CIT(A)'s order in penalty mentions both the charges i.e. concealed the particulars of income and furnishing inaccurate particulars of income.

Therefore, the jurisdiction assumed in this case both vide assessment order and penalty notice was for non-specific charge and so was the penalty order and Ld. CIT(A)'s order.

In view of following judicial decisions, penalty u/s 271(1)(c) in such cases cannot be imposed:

- CIT vs. SSA's Emerald Meadows., (2016) 73 Taxmann.com 248 (SC). (CLC Page 1-2)
- CIT vs. SSA's Emerald Meadows, (2016) 73 Taxmann.com 241 (Kar). (CLC Pages 3-4)
- PCIT & Ors. vs. Sahara India Life Insurance Company Ltd. & Ors., (2021) 432 ITR 0084 (Del). (CLC Pages 5-9)
- CIT & Anr. vs. Manjunatha Cotton & Ginning Factory., (2013) 359 ITR 0565 (Kat) (CLC Pages 10-44)

- Mohd. Farhan A. Shaikh vs. DCIT. (2021) 434 ITR 0001 (Bom) (FB). (CLC Pages 45-83)
- ITO vs. Silvertone Infrastructure Pvt. Ltd., ITA No.4998/2019 dated 11.01.2023 (Del). (CLC Pages 84-87)
- Orient Clothing Company Pvt. Ltd. vs. ACIT, ITA No. 8931/2019 dated 05.01.2023 (Del). (CLC Pages 88-96)
- Shri Chetan Gupta vs. DCIT, ITA No. 894/2015 dated 28.06.2022 (Del). (CLC Pages 97-99)
- ACIT vs. M/s Ansal Properties and Infrastructure Ltd., ITA No. 5240/2017 dated 22.02.2022 (Del). (CLC Pages 100-107)
- Dr. Ajith Kumar Pandey vs. ITAT, (2009) 310 ITR 0195 (Patna). (CLC Pages 108-111)
- Zile Singh Kashyap vs. ITO, ITA No.431/2020 dated 06.04.2023 (Del). (CLC Pages 112-116)”

6. Per contra, ld. DR for the Revenue summarized his submissions as under :-

“A. Bombay High Court (Full Bench!). Farhan A. Shaikh in ITA No. 51 & 57 of 2012 dated 11.03.2021 Does Not Address:

P.R. Mukherjee, Calcutta High Court 30 ITR 535 as affirmed by the Supreme Court in Kantamani Venkata Narayana-1967 AIR 587,1967 SCR(l) 1984.

B. Does not address the Jurisdictional fact of "satisfaction",

As evident from the Assessment Order not to be discerned from contents of Notice u/s 274.

C. Does not address Allahabad High Court- Rulings in a catena of cases-

Contents of notice u/s 274 not prescribed by Statute mainly for show cause opportunity of hearing.

- D. The concept of prejudice as alluded to by Bombay High Court Full Bench-39 ITR 1, is contrary to Delhi High Court in Sudev Industries.

Prejudice to be examined as an inference in Facts

Vide principles enunciated by Supreme Court in the State of Haryana vs. Nar Singh

- E. Satisfaction- Jurisdictional Fact
Page - 6-14.
A3-A-13 in the Paper Book

- F. Posed as a Question of Law

Answered by Bombay High Court in Shyam Biri Works not adjudicated by Bombay High Court against K P Madhusudan Supreme Court and Madan lal kishore Lal Allahabad High Court Specifically states that "No express invocation of explanation to sec. 271 in the notice u/s 271 is in our law necessary.

- G. New Sorathia Engineering Works HC- 282 ITR 642 at the initiation of proceedings a specific change is not required. It is only prima-facie-conclusiveness not to be considered by at the stage of initiation.

- H. Madhushree Gupta -Del High Court- A prima-facie satisfaction cannot be based on its conclusiveness.

- I. Godrej & Boyce (Bombay High Court) Page 78 & 79. In ITA No. 626 of 2010 and Writ Petition No. 758 of 2010 dated 12.08.2010.

"When a statute postulates the satisfaction of the Assessing Officer "Courts do not readily defer to the conclusiveness of the authorities opinion as to the existence of a matter of law or fact upon which the validity of the exercise of power is predicated "-M.A. Rasheed vs. State of Kerala."

7. We have carefully considered the submissions of both the sides and perused the records. We note that ld. CIT DR has placed reliance upon the decisions of non-jurisdictional High Courts while ld. Counsel of the assessee has referred the decisions of Hon'ble Apex Court and Hon'ble jurisdictional High Court. We may gainfully refer to Hon'ble jurisdictional High Court decision in the case of Pr.CIT vs. Sahara India Life Insurance Company Ltd. & Ors. (2021) 432 ITR 0084 (Del.). The exposition of Hon'ble High Court in this regard is as under :-

“21. The Respondent had challenged the upholding of the penalty imposed under Section 271(1) (c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) and observed that the notice issued by the AO would be bad in law if it did not specify which limb of Section 271(1) (c) the penalty proceedings had been initiated under i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Karnataka High Court had followed the above judgment in the subsequent order in Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 Taxman.com 241 (Kar), the appeal against which was dismissed by the Supreme Court of India in SLP No.11485 of 2016 by order dated 5th August, 2016.

22. On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises.

23. The appeals are accordingly dismissed.”

8. We note that in unequivocal terms, the aforesaid case law from Hon'ble jurisdictional High Court has expounded that a notice issued for imposing penalty under section 271(1)(c) of the Act has to specify the

charge and it cannot be omnibus notice. Hence, we agree with the Id. Counsel of the assessee that this decision from Hon'ble jurisdictional High Court preside over other decisions referred by Id. CIT DR for the Revenue. Hence, to conclude, penalty imposed u/s 271(1)(c) of the ACT will not be sustainable if the penalty notice does not specify the specific charge. In the present case, this ground has been raised for the first time before us. Hence, we remit the issue to AO. AO shall examine the records and follow the judicial principle as enunciated herein above which has also the mandate of Hon'ble jurisdictional High Court. Needless to add, assessee should be provided an opportunity of being heard.

9. In the result, this appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 22nd day of June, 2023.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 22nd day of June, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-28, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**