

**आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRIB.M. BIYANI, ACCOUNTANT MEMBER**

I.T.A. No.950/Ind/2019  
(A.Y. 2005-06)

M/s. Dhanraj Distributors Pvt.Ltd., 415, Apollo Tower, 2 M.G.Road, Indore.  <b>PAN AABCD4075A</b> <b>(Appellant)</b>	Vs.	DCIT, Circle 1(1), Indore.  <b>(Respondent)</b>
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Assessee by	Shri Pawan Ved, Adv.
Department by	Shri Ashish Porwal, Sr. DR
Date of Hearing	17.04.2023
Date of Pronouncement	22.06.2023

**ORDER**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 30.09.2019 passed by learned Commissioner of Income Tax (Appeals)-I, Indore[“**Ld. CIT(A)**”], which in turn arises out of penalty-order dated 30.03.2017 passed by learned DCIT-1(1), Indore[“**Ld. AO**”] u/s 271(1)(c) of the Income Tax Act, 1961 [“**the Act**”], the assessee has filed this appeal on the following grounds:

“1. The penalty levied by AO is null and void as the notice issued is vague as to concealment of income or furnishing inaccurate particulars of income.

2. The penalty levied by AO is null and void as the Ld. JCIT approved the penalty order without application of mind.

3. *On meris, the penalty deserves to be cancelled."*
2. Heard the learned Representatives of both sides at length and case record perused.
3. Briefly stated facts are such that the assessee-company submitted return of relevant AY 2005-06 on 25.10.2005 declaring a total income of Rs. 2,33,750/- which was subjected to scrutiny assessment. The AO framed assessment vide order dated 07.12.2007 after making a total addition of Rs. 6,09,500/- consisting of (i) disallowance of Rs. 1,56,000/- u/s 40A(2); (ii) addition of Rs. 4,05,500/- u/s 68; (iii) disallowance of Rs. 28,000/- out of telephone, vehicle maintenance and depreciation; and (iv) disallowance of Rs. 20,000/- out of office, conveyance and travelling expenses. Aggrieved, the assessee carried matter in first-appeal wherein the CIT(A) granted part relief by deleting the addition of last item of Rs. 20,000/-. Subsequently, vide penalty-order dated 30.03.2017, the AO imposed a penalty of Rs. 2,05,469/- u/s 27(1)(c) *qua* first two items. The assessee went in appeal against penalty-order too but could not succeed. Now, the assessee has come in this appeal before us assailing the imposition of penalty.
4. Ld. AR representing the assessee opened his arguments by carrying our attention to the show-notice dated 07.12.2007 issued by AO u/s 274 read with section 271(1)(c), placed in the case-record. Referring to same, Ld. AR submitted that the AO has stated as under:

***"Whereas in the course of proceedings before me for the assessment-year 2005-06 it appears to me that you have concealed the particulars of your income or furnished inaccurate particulars of such income"***

5. Ld. AR submitted that the notice u/s 274 sets in motion the penalty-proceeding. According to Ld. AR, the notice dated 07.12.2007 issued by AO is very much vague in as much it contains stereotype language of section 271(1)(c). The Ld. AR contended that by saying that the assessee has "concealed the particulars of income" or "furnished inaccurate particulars of

income”, the AO is himself not sure about the default committed by the assessee. According to Ld. AR, there are innumerable decisions of the Hon’ble Courts and ITAT where it has been loudly held that if the show-cause notice does not spell out the specific charge of default committed by assessee, the notice and subsequent proceeding founded thereon are invalid. In support of his contention, the Ld. AR placed strong reliance on the decision of Hon’ble Jurisdictional High Court of M.P. in the case of **Pr.CIT-I, vs. Kulwant Singh Bhatia**, ITA No. 9 to 14 of 208, order dated 9<sup>th</sup> May 2018, wherein it was held as under:

***“8. In the case of CIT V/s. Manjunatha Cotton Ginning Factory (supra), it was observed by the Karnataka High Court in para 59 that the practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initiated presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the provisions have to be held to be strictly construed, notices issued under Section 274 should satisfy the grounds, which he has to meet specifically. Otherwise, principle of natural justice is offended if the show cause notice is vague. Even in the matter of search case where penalty is levied under Explanation 5A to Section 271(1)(c), it was held by the Karnataka High Court that the show-cause notice under Section 274 was defective as it does not spell out the ground on which the penalty is sought to be imposed and consequently penalty imposed was cancelled. The decision of CIT V/s. Manjunatha Cotton Ginning Factory (supra) was further followed by the Karnataka High Court in the case of CIT V/s. SSA'S Emerald Meadows, (2016) 73 taxman.com 248 (SC) / dated 23.11.2015 (ITA 380/2015), the High Court has dismissed the appeal of the revenue by observing that the Tribunal has allowed the appeal of the assessee holding that the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Act of 1961 was bad-in-law as it did not specify which limb of Section 271(1)(c) of the Act of 1961, the penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars. The Tribunal while allowing the appeal of the assessee, had relied on the decision of the Division Bench of Karnataka High Court decision in the case of CIT V/s.***

***Manjunatha Cotton Ginning Factory (supra). It is further pointed out that the SLP filed by the Deptt. before the Apex Court on 5.8.2016 in the matter of CIT V/s. SSA'S Emerald Meadows (supra) was dismissed. In the case of CIT V/s. Suresh Chandra Mittal, (2000) 251 ITR 9 (SC), the Apex Court has upheld the decision of M.P. High Court wherein, in similar circumstances, it was held that the initial burden lies on the revenue to establish that the assessee had concealed the income or had furnished inaccurate particulars of such income. In the present case, in show-cause notice the Assessing Officer has not specified specifically charges, there was no such mention.***

***11. On due consideration of the arguments of the learned counsel for the appellant, so also considering the fact that the ground mentioned in show-cause notice would not satisfy the requirement of law, as notice was not specific, we are of the view that the learned Tribunal has rightly relying on the decision of CIT V/s. Manjunatha Cotton Ginning Factory (supra) and CIT V/s. SSA'S Emerald Meadows (supra) rightly allowed the appeal of the assessee and set aside the order of penalty imposed by the authorities. No substantial question of law is arising in these appeals. ITA.No(s). 9/2018, 10/2018, 11/2018, 12/2018, 13/2018 and 14/2018, filed by the appellant have no merit and are hereby dismissed."***

6. Ld. AR submitted that the present case of assessee stands fully covered by this binding decision of Hon'ble jurisdictional High Court and in view of the same, the penalty-order passed by AO is totally invalid.

7. Ld. DR, though could not contradict the applicability of decision of Hon'ble jurisdictional High Court on facts and in law, strongly supported the penalty-order passed by AO.

8. We have considered rival submissions of both sides and perused the case-records including the show-cause notice and order of penalty made by AO in the light of decision of Hon'ble Jurisdictional High Court. On perusal of the show-cause notice issued by AO, we observe that the notice contains both of the charges viz. "concealed the particulars of income" or "furnished inaccurate particulars of income" and the AO has not stricken-off any one. Therefore, the whole proceeding of penalty conducted by the AO is illegal

and unsustainable as per the decision of Hon'ble jurisdictional High Court in **Kulwant Singh Bhatia (supra)**. The Ld. DR could not controvert the facts of the case or applicability of this judgement. Therefore, we are satisfied that the penalty imposed by AO is not valid on this very reasoning. Accordingly, without going into merits of penalty, we quash the penalty-proceeding at the very threshold on legality aspect itself as claimed by assessee in Ground No. 1. The assessee succeeds in this appeal.

**9. Resultantly, this appeal of assessee is allowed.**

*Order pronounced in the open court on 22.06.2023.*

Sd/-  
VIJAY PAL RAO  
JUDICIAL MEMBER

Sd/-  
B.M.BIYANI  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 22.06.2023

CPU/Sr. PS

*Copies to: (1) The appellant*  
*(2) The respondent*  
*(3) CIT*  
*(4) CIT(A)*  
*(5) Departmental Representative*  
*(6) Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Indore Bench*