

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 146/Asr/2023
Assessment Year: 2015-16

Sh. Ajay Kumar Chadda
687-R, Model Town,
Jalandhar, Punjab

[PAN: AAIPC 7006J]

(Appellant)

Vs. Income Tax Officer,
Ward-1(1), Jalandhar

(Respondent)

Appellant by : Sh. Navdeep Monga, Adv. &
Sh. Karan Nagpal, Adv.

Respondent by: Sh. Mohit Kumar Nigam, Sr. DR

Date of Hearing: 03.08.2023

Date of Pronouncement: 23.08.2023

ORDER

Per Dr. M. L. Meena, AM:

The captioned appeal has been filed by the by the assessee against the order of the Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 23.03.2023 in respect of Assessment Year: 2015-16 wherein

challenging therein the confirmation of penalty levied u/s 271(1)(c) of the Income Tax Act, 1961.

2. At the time of hearing, the Id. counsel for the assessee has raised the additional ground of appeal under Rule 11 of the ITAT Rules as under:

“viii. That on the facts and under the circumstance of the case the penalty levied under Section 271(1)(c) of the Act is void as the notice u/s.274 read with Sec. 271 dated 10.08.2017 is bad and defective as it was issued without deleting the appropriate clause under which the penalty is proposed to be imposed is either for filling of inaccurate particular of income or concealment of particulars of income and as such the notice is not sustainable and not curable.”

3. He prayed that the said additional ground arises out of the facts available on record and since it goes to the root of the matter, therefore, the same may be permitted to be admitted in the light of the decision of the Hon'ble Supreme Court in the case of CIT v. Varas International 284 ITR 80 (SC) and National Thermal Power Co. Ltd. v. CIT reported in 229 ITR 383 (SC).

4. Per contra, the Id. DR for the department failed to rebut the contention of the assessee on the issue of admission of additional on the legal issue. Since, the legal issue raised by the assessee goes to the root of the issue in deciding the matter and therefore, in the light of the principle

laid down by the Hon'ble Apex Court in the case of National Thermal Power Corporation Ltd. v. CIT (supra), the legal ground raised by the assessee is admitted for adjudication on merits of the case. He filed written brief, relevant is reproduced as under:

“7. Ld. counsel adverted to the impugned penalty notice dated 20.06.2014 and submitted that the nature of default committed by the assessee is not known as the inappropriate portion in the relevant column of the show cause notice has not been struck off. Consequently, the Assessing Officer himself was unsure of the category under which the default is blamed on the assessee. Consequently, the penalty order passed in consequence of such defective notice suffers from non application of mind and lack of satisfaction towards nature of default. It was further pointed out that the assessee belongs to Rockland Group of companies where the search was conducted on 06.09.2011, and in the identical set of facts, the penalty imposed u/s.271 (1)(c) was deleted in other group cases owing to similar defective notice. A reference was made to the decision of Co-ordinate Bench of Tribunal in Radhika Surgical Pvt. Ltd. vs. ACIT in ITAs No.5090, 5091 and 5092/Del/2017 and M/s. Akhil Meditech Pvt. Ltd. in ITAs No.5118, 5119, 5120 and 5121/Del/2017 where in the identical fact situation the penalty has been quashed. A further reference was made to the decision of the Hon'ble High Court in case of (i) PCIT vs. Sahara India Life Insurance Co. Ltd. as reported in 432 ITR 84 (Del.); (ii) CIT & Anr. v. Manjunatha Cotton and Ginning Factory, 359 ITR 565 (Karn); (Hi) Mohd. Farhan A. Shaikh vs. Dy. CIT [2021] 434 ITR 1 [Bom (FB] for the proposition that notice issued under Section 274 r.w. Section 271(1)(c) of the Act is bad in law where it did not specify under which limb of Section 271(l)(c) of the Act, penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. It was thus urged that the whole proceedings seeking to impose penalty is non-est and bad in law at the threshold and consequently the penalty order in pursuance of the defective notice requires to be struck down.”

5. Having heard both the sides, and perusal of the record and the impugned order, we find that the AO issued penalty notice u/s 274 r.w.s 271(1)(c) of the Act on 10.08.2017. Admittedly, the said notice was defective one, as both the limbs of section 271(1)(c) of the Act are mentioned therein. The Assessing Officer has not struck off the irrelevant clause in the said notice. Reliance is placed on the decision of Hon'ble Bombay High Court in the case of **Ventura Textiles Vs. CIT (2020) 426 ITR 478 CBom** wherein it has been held that for the imposition of penalty under section 271(l)(c) there are two limbs i.e. concealment of particulars of income or furnishing inaccurate particulars of income, therefore it is necessary to struck off the inapplicable portion of limb which is not applicable in the case. As the AO has failed to struck off the inapplicable portion in the show-cause notice which was in printed format, thereby not indicating therein under which limb of section 271(l)(c) penalty was proposed to be imposed and thus it would lead to an inference of non-application of mind, thus vitiating the imposition of penalty. Recently, the Ld. ITAT, Mumbai Bench in the case of **I.G. International Pvt. Ltd. Vs. ACIT IT A No. 123/Mum/2023** vide order dated 30.05.2023 has taken the similar view by setting aside the impugned penalty order based on the defective notice. The copy of notice issued u/s 274 r.w.s. 271 of the Act is reproduced for reference as under:

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INCOME TAX DEPARTMENT
Office of the Income Tax Officer - 1(1),
Room No. 202, 2nd Floor, C.R. Building (New Wing), Civil Lines, Jalandhar (Punjab)

Notice under section 274 read with Section 271 of the Income Tax Act, 1961

No. ITO/W-1(1)/Jal/ GLS

Dated: 10.08.2017

To

Shri Ajay Kumar Prop., (AAIPC7006J)
M/s. Ajay Trading Co.
W.H. 209, G.T. Road, Jalandhar.

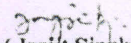
Sir,

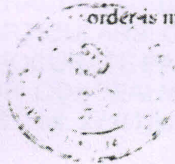
Whereas in the course of proceedings before me for the assessment year 2015-16, it appears to me that you :

* have concealed the particulars of your income / furnished inaccurate particulars of such income.

You are hereby required to appear before me at 11:30 AM on 28.08.2017 and show cause why an order imposing a penalty on you should not be made under section 271(1)(c) of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through 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(1)(c) of Income Tax Act, 1961.

Yours faithfully,


(Jagjit Singh)
Income Tax Officer - 1(1),
Jalandhar.



6. The Hon'ble ITAT Delhi Benches Delhi in the case of Aesthetica Enterprises Pvt. Ltd. v. ACIT in ITA Nos. 5132 & 5132/Asr/2017 vide order dated 07.11.2022 deleted pending u/s 271(1)(c) by observing as under:

"7. We have heard both the parties and perused all the relevant materials available on record. First of all, in the notice issued u/s 274 r.w.s 271(1)(c) of the Income Tax Act, 1961, there was no specific charges as relates to concealment of income or furnishing of inaccurate particulars of income. From the notice dated 20/06/2014 produced by the Ld. AR during the hearing, it can be seen that the Assessing Officer was not sure under which limb of provisions of Section 271 of the Income Tax Act, 1961, the assessee is liable for penalty. Besides that the Assessment Order also did not specify the charge as to whether there is concealment of income or furnishing of inaccurate particulars of income in assessee's case. Besides this, the present case is relating to search conducted by the Revenue in the premises of the assessee, while the decision relied by the Assessing Officer as well as CIT (A) that of Hon'ble Supreme Court in case of Mak Data P. Ltd. vs. CIT 358 ITR 593 is relating to survey and there is no issue involved about the notice issued u/s 271(l)(c) r.w.s. 274 of the Act. This case relied by the Revenue is not applicable in the present case due to the distinguishing facts. There is separate provision for penalty in search cases given under the statute after 01.07.2012 that of Section 271AAB of the Act which was totally ignored by the Assessing Officer. Thus, the penalty itself is based on incorrect Section. Therefore we are taking up the contention of the assessee that there is no particular limb mentioned in the notice issued under Section 271(l)(c) r.w.p. 274 of the Act. This issue is squarely covered by the decision of the Hon'ble Supreme Court in case of M/s SSA' Emerald Meadow. The extract of the decision of the Hon'ble Karnataka High Court in M/s SSA' Emerald Meadows are as under which was confirmed by the Hon'ble Apex Court:

"3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(l)(c) of the Income Tax Act, 1961 for short 'the Act') to be bad in law as it did not specify which limb of Section 271(i)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the 1TA No. 4913/Del/2015 decision of the Division Bench of this Court rendered in the case of COMMISSIONER OF INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565.

4. In our view, since the matter is covered by judgment of the Division Bench of this Court) we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed. "

Thus, Additional Ground No. (ii) of the assessee's appeal is allowed. Since the inception of the notice issued u/s 271(l)(c) has become null and void, there is no need to comment on merit of the case. The Penalty u/s 271(1)(c) of the Act is quashed. "

Since in the instant case also the inappropriate words in the penalty notice has not been struck off and the notice does not specify as to under which limb of the provisions, the penalty u/s 271(1)(c) has been initiated, therefore, we are of the considered opinion that the penalty levied u/s 271(l)(c) is not sustainable and has to be deleted. Although the Ld. DR submitted that mere non-striking off of the inappropriate words will not invalidate the penalty proceedings, however, the decision of the Hon'ble Karnataka High Court in the case of SSA'S Emerald Meadows (supra) where the SLP filed by the Revenue has been dismissed is directly on the issue contested herein by the Assessee. Further, when the notice is not mentioning the concealment or the furnishing of inaccurate particulars, the ratio laid down by the Hon'ble High Court in case of M/s. Sahara India Life Insurance Company Ltd. (supra) will be applicable in the present case. The Hon'ble Delhi High Court held as under:

“21. The Respondent had challenged the upholding of the penalty imposed under Section 271(l)(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(l)(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 IT AT. No substantial question of law arises. Thus, notice under Section 271(l)(c) r.w.s. 274 of the Act itself is bad in law. We, therefore, set-aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied.

9. Before us, no distinguishing feature in the facts of the case in the-year under consideration and that of earlier year has been pointed out by the Revenue. Further it has also not brought on record any material to show that the decision of the Co-ordinate bench of the Tribunal in assessee's own case for A.Y. 2008-09 has been set aside/ stayed or over ruled by the higher judicial forum. Considering the totality of the aforesaid facts and following the decision of the Co-ordinate bench in the assessee's own case for 2008-09 and for similar reasons, we are of the view that the levy of penalty u/s 271(1)(c) was not justified. We therefore direct its deletion. **Thus the grounds of the assessee are allowed.** ”

10. In parity with a view taken by the Co-ordinate Bench, we are inclined to accept the plea of the assessee that the notice issued for the purposes of imposition of penalty, which suffers from the vice of vagueness, does not provide sound legal basis for imposition of penalty. Consequently, we set aside the order of the CIT(A) and quash the impugned penalty order.

11. In the result, the appeal of the assessee is allowed.”

7. In the instant case, since the AO has failed to strike off the inapplicable portion in the show-cause notice in printed format, and hence, he failed to indicate therein under which limb of section 271(l)(c) penalty was proposed to be imposed. Thus, it would lead to an inference of non-application of mind, and as such vitiating the imposition of penalty.

8. In the above view, we accept the plea of the assessee as justified that the notice issued for the purposes of imposition of penalty, suffers from the vice of vagueness, and does not provide a sound legal basis for imposition of penalty. Consequently, we set aside the order of the CIT(A) and quash the impugned penalty order.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 23.08.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy
By Order