

**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.249/Asr/2023
Assessment Year: 2012-13**

Jammu & Kashmir State Agro Industries Development Corporation Ltd. Srinagar. [PAN: -AACCT8102B] (Appellant)	Vs.	ITO-Ward-II, Srinagar. (Respondent)
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Appellant by	Sh. Bashir Ahmad Lone, CA
Respondent by	Smt. Balvinder Kaur, CIT. DR

Date of Hearing	18.09.2023
Date of Pronouncement	20.09.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT (A)’], order passed u/s 250 of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y. 2012-13. The impugned order was emanated from the order of the Id. ACIT, Circle-3, Srinagar, [in brevity ‘the AO’] order passed u/s 271(1) (c) of the Act.

2. The assessee has taken the following grounds:

1. *The penalty order is bad in law, as the Ld. AO has not specified whether the penalty is imposed for furnishing of inaccurate particulars of income or concealment of income.*
2. *The penalty order is bad in law, as the Ld. AO is himself not clear whether the penalty is levied for furnishing inaccurate particulars of income or for concealment of income.*
3. *The penalty order is bad in law, as the basis of initiation of penalty proceedings u/s 271(1) (c) of the Income Tax Act 1961 & imposition of penalty are in-consistent.*
4. *The Ld. AO has erred in both facts & laws by imposing penalty u/s 271 (1)(c) of the Income Tax Act 1961, by treating sundry creditors of Rs.331,90,534.00 as unexplained investment when the same represents assessee's liability.*
5. *The Ld. AO has erred in both facts & laws by imposing penalty u/s 271(1)(c) of the Income Tax Act 1961, by treating sundry creditors of Rs.331,90,534.00 as unexplained investment when the same represents creditors in ordinary course of business.*
6. *The Ld. AO has erred in both facts & laws by imposing penalty u/s 271 (1)(c) of the Income Tax Act 1961, of Rs 1,04,55,018.00 as 100% of tax sort to be evaded when the assessee was not required to pay any taxes even after additions.*
7. *That the assessment is based on mere presumptions and conjectures.*

8. *That the appellant craves leave to add/amend any ground of appeal at the time of hearing.”*

3. Brief fact of the case is that the assessment was completed u/s 143(3) of the Act. The demand was fixed total amount of Rs.1,37,39,110/-. The penalty was initiated u/s 274/271(1)(c) of the Act and the total concealment of assessee for Rs.3,31,90,534/-. The tax was calculated total amount of Rs.1,04,55,018/- on undeclared income. The ld. AO levied penalty of 100%. So, the penalty u/s 271(1)(c) was levied Rs.1,04,55,018/-. Aggrieved assessee filed an appeal before the ld. CIT(A). The assessee has taken both legal and factual ground before the ld. CIT(A). After considering the submission of the assessee, the ld. CIT(A) dismissed the appeal of the assessee and upheld the penalty order. Being aggrieved assessee filed an appeal before us.

4. The ld. AR vehemently argued and filed written submission which is kept in the record. The ld. AR first pointed out in assessment order the ld. AO had not made the proper satisfaction related to penalty u/s 271(1)(c) for concealment of particular income or furnished for inaccurate particulars of income. The ld. AR invited our attention in notice u/s 274 /271(1)(c) of the Act **APB page 1** which is reproduced as below:

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT 1961

PAN AACCT 8102B

Office of the
Asstt. Commissioner of Income Tax,
Circle 3, Srinagar
Dated: 20-03-2015

To
M/s Jammu & Kashmir State Agro
Industries Development Corporation
Lal Mandi Srinagar,

Sir / Madam,


Whereas in the course of proceedings before me for the Assessment Year 2012-13, it appears to me that you:-

- have without reasonable cause failed to furnish me return of income which you are required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian Income Tax, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2) /148 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(1)/23(2) of the Indian Income Tax Act, 1922 or under section 142 (1)/143(2) of the Income Tax Act, 1961 No. Dated

have concealed the particulars of your income or have furnished inaccurate particulars of your income.

You are hereby requested to appear before me at 12.00 A.M./P.M. on 21-04-2015 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 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).

SEAL

Yours faithfully

(Gulzar Ah. Wani).IRS
Asstt. Commissioner of Income Tax
Circle 3 Srinagar

4.1 The Id. AR further mentioned that the assessee's issue is squarely covered by the ITAT Amritsar Bench in the case of **M/s J & K State Power Development Corporation Ltd. vs. ACIT, Srinagar** in ITA No. **339/Asr/2016, date of order 27.07.2019**. The relevant paragraphs of said order are reproduced as below:

“ 8 -In our considered view, the Apex Court in Income Tax, Bangalore Versus M/s. SSA's Emerald Meadows (supra), the Hon'ble High Court of Karnataka in case of M/s. SSA's Emerald 11 ITA No.339/Asr/2016 (A.Y.2011-12) J &K Slate Power Dev. Corp. Ltd. Sri vs. ACIT Meadows (supra) and in Manjunatha Cotton and Ginning Factory' (supra) and co-ordinate bench in Third Member's case i.e. HPCL Mittal Energy Ltd Vs Addl CIT' & 'HPCL Mittal Pipeline Ltd., Vs Addl CIT (supra) dealt with identical issue as involved in this case and therefore we while respectfully following the dictum of Apex Court laid down in S.I. Rooplal and Anr Vs Lt. Governor through Chief Secretary Delhi & Ors.(supra) qua following the principles of judicial discipline, rules of precedents and to maintain consistency in the decisions, are inclined to follow the aforesaid decisions.

9- Coming to the instant case, bare perusal of the assessment order dated 28-03-2014, whereby the penalty proceedings have been imitated and notice dated 28-03-2014 issued u/s 274 of the Act, apparently goes to prove that the Assessing Officer initiated the penalty proceedings in the assessment order and issued the notice u/s 274/271(l)(c) of the Act without specifying whether the assessee has concealed " the particulars of income" or the assessee has furnished " the inaccurate particulars of income", so as to provide adequate opportunity to the assessee

to explain the show cause notice. Rather notice in this case has been issued in a stereotyped manner without applying any mind which is bad in law, hence is not a valid notice sufficient to impose penalty u/s 271(l)(c) of the Act. Further the assessing officer while imposing the penalty also, used both the limbs by mentioning oblique such as " concealment of particulars of income/furnishing the particular of income", therefore it goes to prove that even the mind of the AO, while recording the satisfaction in Assessment Order, issuing the notice dated 28-03-2014 u/s 274 of the Act and while imposing the penalty as well, was indecisive and unclear under which limb, the penalty proceedings have to be initiated and under which limb the assessee had to reply in order to defend its case and under which limb the penalty warranted and supposed to be levied, therefore we are of the view that under these facts and circumstance, the penalty is not leviable as held by the various Courts including the Apex Court, hence, we have no hesitation to delete the penalty levied by the AO and affirmed by the Ld. CIT (A).

The I.d. CIT (A) in the instant case, has relied on ITAT Hyderabad judgement, which is applicable to non-filer and not applicable to appellate.”

5. The Id. DR vehemently argued and relied on the orders of the revenue authorities. But the Id. DR was not able to submit any contrary judgment against the submission of the assessee.

6. We heard the rival submission and considered the documents available in the record. The assessee's case is squarely covered by the Coordinate Bench in the **ITA No. 339/Asr/2016** (supra). The different High Courts and the Tribunal already decided the issue in favour of the assessee related to issuance of notice u/s 271(1)(c) of the Act. Section 271(1)(c) is two limbs concealed income and inaccurate particulars of the income. Before issuing the notice, the Id. AO should specify the limb related to penalty proceedings. This particular notice it is a self-defective and the Id. AO did not mention the nature of concealment in the notice issued u/s 274/271(1)(c). The counsel laid down that in the absence of such specific notice, the notice would be invalid as held in various judicial pronouncements including the decision of Hon'ble **Karnataka High Court** in **CIT V/s SAS's Emerald Meadows (73 Taxmann.com 241)** against which Special Leave Petition (SLP) filed by the department stood dismissed by Hon'ble Supreme Court which is reported as **73 Taxmann.com 248**. The notice u/s 274/271(1)(c) of the Act is not carrying the specific limb. Therefore, this is a case where both the parts of the offences i.e., concealment of income as well as furnishing of inaccurate particulars of income were involved.

Finally, respectfully following the binding judicial precedents as cited aforesaid, we are of the considered opinion that the impugned penalty is not sustainable on legal grounds. Hence, by deleting the same, we allow the appeal of the assessee.

7. In the result, the appeal of the assessee **ITA No. 249/Asr/2023** is allowed.

Order pronounced in the open court on 20.09.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

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

True Copy
By order